STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Staci L. Spillare,
Petitioner,

vs. No. 09 WC 07873

14IWCC0131

Emery Air, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, and prospective medical treatment, and being advised of the facts and law, modifies the April 16, 2013 Decision of Arbitrator Erbacci as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Comm'n, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

After considering the entire record, the Commission affirms and adopts the Arbitrator's findings with respect to all issues. However, the Commission modifies the Arbitrator's Decision by striking the following language, found on page 9 of the Decision in the Conclusions section:

> The Arbitrator notes that the Petitioner testified that she began receiving unemployment benefits from the State of Illinois shortly after her termination by the Respondent and that those benefits continued until February 2010. As the Arbitrator has awarded the Petitioner temporary total disability benefits for that period of time, the Arbitrator finds that the Petitioner is obligated to repay to the State of Illinois all of the unemployment insurance benefits she received.

All else is otherwise affirmed and adopted

14IWCC0131

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on April 16, 2013 is hereby modified.

IT IS FURTHER ORDERED BY THE COMMISSION that the language contained in the Arbitrator's Conclusions and cited above be stricken from the Arbitrator's Decision

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical expenses of $33,428.61, as provided in §§8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay all reasonable and necessary prospective medical expenses associated with the spinal cord stimulator trial prescribed by Dr. Lubenow, as provided in §§8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay Petitioner temporary total disability benefits of $344.50 week for 160 1/7 weeks, commencing October 7, 2008 through October 8, 2008, and from February 5, 2010 through March 6, 2013, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 25 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

o-11/25/13
drd/dak
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

SPILLARE, STACI
Employee/Petitioner

Case# **09WC007873**

EMERY AIR INC
Employer/Respondent

14IWCC0131

On 4/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4788 HETHERINGTON KARPEL BOBBER ET AL
MATTHEW MILLER
161 N CLARK ST SUITE 2080
CHICAGO, IL 60601

KOPKA PINKUS DOLIN & EADS
BRIAN KAPLAN
100 LEXINGTON SUITE 100
BUFFALO GROVE, IL 60089

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Staci Spillare
Employee/Petitioner

Case # 09 WC 7873

v.

Emery Air, Inc.
Employer/Respondent

14IWCC0131

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Woodstock**, on **March 6, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

14IWCC0131

FINDINGS

On the date of accident, **October 6, 2008**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury the Petitioner's average weekly wage was **$516.75**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **1** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$5,020.12** for TTD.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $344.50 /week for 160 1/7 weeks, commencing October 7, 2008 through October 8, 2008, and from February 5, 2010 through March 6, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from October 7, 2008 through March 6, 2013,, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of **$5,020.12** for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of **$33,428.61**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay the reasonable and necessary medical expenses associated with the spinal cord stimulator trial prescribed by Dr. Lubenow, as provided in Sections 8(a) and 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Arbitrator Anthony C. Erbacci

April 12, 2013
Date

09 WC 7873
ICArbDec19(b)

APR 16 2013

FACTS: 14IWCC0131

On October 6, 2008, the Petitioner was working for the Respondent as an airplane detailer having been so employed for one month. The Petitioner testified that her job duties included maintaining and cleaning airplanes and that she was paid $10.00 per hour and typically worked 40 hours per week. The Petitioner testified that she had previously obtained an airplane pilot's license in 1993 but that her pilot's license had expired about one year prior to her employment with the Respondent.

The Petitioner testified that on October 6, 2008, she was also working at Upper Crust, her family's bakery business, where her job duties included baking and decorating cakes and pies. She testified that she was paid $16.00 per hour for that work and that she typically worked 13 hours per week as of October 2008. The Petitioner testified that she had informed the Respondent of her employment at Upper Crust during the interview process and that her supervisor at the Respondent, Chris, was aware of her employment at the bakery. The Petitioner testified that other employees of the Respondent were also aware of her employment at the bakery as she would occasionally bring baked goods to work for consumption by her co-workers.

During her shift on October 6, 2008, the Petitioner was assigned to clean an airplane. She testified that as she was in the process of cleaning the airplane doorway from the air stairs she fell backwards off the stairs and landed on the ground approximately 5-6 feet below. She testified that she lost consciousness for a time and that, after she regained consciousness, she was taken to Physicians Immediate Care in Rockford. The Respondent did not dispute that an accident occurred which arose out of and in the course of the Petitioner's employment.

The records of Physicians Immediate Care reflect that the Petitioner gave a history of falling and twisting her left ankle. It was noted that the Petitioner was complaining of pain mainly on the lateral aspect of her left ankle and in her leg. It was noted that there was swelling in the ankle and the assessment was a left ankle sprain. The Petitioner was prescribed medication, provided with an ankle brace and told to remain off work for two days.

The Petitioner testified that she remained off work for two days following the accident and then returned to work for the Respondent performing secretarial duties. The Petitioner testified that she continued to perform secretarial work for the Respondent for several weeks and that she continued to follow up at Physicians Immediate Care. The Petitioner testified that she continued to have pain in her left leg and ankle as well as pain in her right rib cage and her low back.

The records of Physicians Immediate Care reflect that the Petitioner continued to follow up for her left ankle sprain/strain and rib contusion and continued to complain of occasional ankle pain. On October 29, 2008, the assessment was "left ankle sprain, improving" and the Petitioner was released to return to full duty work.

The Petitioner testified that she returned to her regular full duty work for the Respondent but that while performing that work, which included climbing stairs and ladders, she began to experience severe pain in her left leg and ankle again.

On November 19, 2008, the Petitioner followed up at Physicians Immediate Care and complained of a relapse of her left ankle pain. She was prescribed more physical therapy and instructed to avoid climbing ladders. On November 24, 2008 the Petitioner followed up again and complained of increasing ankle pain. She was given restrictions of sit down work only and an MRI of the ankle was prescribed. That MRI was performed on December 2, 2008 and was reported to demonstrate a mild talar bone contusion and a talonavicular ligament sprain. On December 4, 2008 the MRI findings were noted and the assessment continued to be a left ankle sprain/strain. On December 18, 2008 it was recommended that the Petitioner follow up with Dr. William Bush at Rockford Orthopedics. The restrictions of only sit down work were continued.

The Petitioner also sought treatment with her primary care provider, Dr. Gayle Crays, on December 5, 2008. At that time the Petitioner complained of ankle pain and Dr. Crays assessment was an ankle strain/sprain.

On January 15, 2009 the Petitioner was seen by Dr. Bush who noted that the Petitioner had complaints of a burning sensation in her left calf, pain in her left ankle and tingling in the bottom on her left foot. Dr. Bush recommended an EMG which was performed on February 19, 2009 and which was reported to be normal. Dr. Bush diagnosed the Petitioner with common peroneal neuropraxia, and he prescribed an articulating AFO brace, pain medication, and continued physical therapy.

On February 10, 2009, the Petitioner was notified that her employment with the Respondent was terminated effective February 5, 2009. The Petitioner testified that she began receiving unemployment benefits from the State of Illinois shortly thereafter and that those benefits continued until February 2010.

The Petitioner returned to Dr. Crays on March 10, 2009 "for referral to neurology at the suggestion of her lawyer." It was noted that the Petitioner was "improving with her left ankle" but "still has foot drop". It was also noted that the Petitioner reported that she had headaches and vision changes from time to time that might be from her fall. Dr. Crays' assessment was unspecified head injury and muscle weakness, and she referred the Petitioner for a neurology consult. On March 16, 2009, the Petitioner underwent a brain MRI which was reported to be normal. On April 28, 2009 the Petitioner underwent a lumbar MRI which was reported to demonstrate a very small central disc protrusion at L5-S1 with no other abnormalities noted and no compromise of the canal or foramen seen at any level.

On May 7, 2009, the Petitioner saw Dr. Shaun O'Leary of Rush University Neurosurgery. Dr. O'Leary noted that the Petitioner complained of pain in her left thigh and left lower leg and he also noted that "there is also some associated back pain". He noted the EMG and MRI findings and he prescribed medication and physical therapy for the low back.

The Petitioner returned to Dr. O'Leary on July 22, 2009 and continued to complain of pain in her left lower extremity and lower back. A repeat EMG was performed and was reported to be normal. A repeat MRI of the lumbar spine was performed on August 3, 2009 and was noted by Dr. O'Leary to show a mild disc bulge at L4-5 and a smaller bulge at L5-S1 which he noted did not fit with her symptoms. A cervical MRI was performed on September 2, 2009 and was reported to be normal. Shortly thereafter, the Petitioner was placed on work restrictions of sedentary work only with no lifting over 10 pounds, no prolonged sitting and no prolonged standing. On October 8, 2009, Dr. O'Leary recommended that the Petitioner undergo a trial of epidural steroid injections.

On November 17, 2009, the Petitioner consulted with Dr. John Jaworowicz of Medical Pain Management Services for the epidural steroid injections Dr. O'Leary recommended. The Petitioner declined to undergo the recommended injections at that time but, after she discussed the injections with Dr. O'Leary in December 2009, she ultimately underwent the first injection with Dr. Jaworowicz on January 12, 2010. The Petitioner testified that the injection only provided her with minimal relief for a few days following the injection and her pain eventually returned to the pre-injection level.

On February 24, 2010, the Petitioner followed up with Dr. O'Leary and complained of back pain and a burning sensation in her left leg. Dr. O'Leary noted that an epidural steroid injection had provided the Petitioner with little relief and he recommended that she follow up with the Rush Pain Center for a trial of a spinal cord stimulator. Dr. O'Leary diagnosed the Petitioner with chronic regional pain syndrome and lumbar spondylosis.

On March 30, 2010, the Petitioner underwent a myelogram CT examination of her cervical, thoracic and lumbar spine. The cervical examination was reported to be normal, the thoracic examination was reported to show a small disc protrusion at T10-11, and the lumbar examination was reported to show minimal disc bulges at L3-4 and L4-5 and a small disc protrusion at L5-S1. On April 9, 2010, the Petitioner followed up with Dr. Asokumar Buvanendran at the Rush Pain Center and he recommended that she continue taking her medication to help manage her ongoing pain. Thereafter, the Petitioner continued to follow up with Dr. Buvanendran and his partner, Dr. Timothy Lubenow for pain management. On June 8, 2011, Dr. Lubenow prescribed a spinal cord stimulator trial for the Petitioner and on January 26, 2012 Dr. Lubenow prescribed the psychological evaluation which is the pre-requisite to the spinal cord stimulator trial.

At the request of the Respondent, the Petitioner was examined by Dr. John Ruge on November 3, 2011. Dr. Ruge testified that he also reviewed the records of the Petitioner's medical treatment and the video recordings of the surveillance conducted on the Petitioner. Dr. Ruge testified that his examination of the Petitioner revealed marked inconsistencies and symptom magnification and that those examination findings were supported by the Petitioner's activities as shown in the surveillance video. Dr. Ruge opined that as a result of the work injury of October 6, 2008, the Petitioner suffered a left ankle strain, a possible concussion, and mild soft tissue trauma. Dr. Ruge further opined that the Petitioner did not have a peroneal nerve injury but that it was possible that she has complex regional pain

syndrome. Dr. Ruge indicated he would defer to Dr. Lubenow as to whether the Petitioner should undergo a trial of a spinal cord stimulator.

In his deposition testimony of September 20, 2012, Dr. Lubenow opined that the Petitioner's condition of complex regional pain syndrome was causally related to the work injury of October 6, 2008. In his deposition testimony of December 14, 2012, Dr O'Leary opined that the Petitioner's condition of complex regional pain syndrome was more likely than not causally related to the work injury of October 6, 2008.

At trial, The Petitioner testified that she continues to experience pain, numbness and tingling in her left leg, ankle, and foot, as well as low back pain. She testified that her pain is increased with activity and that she continues to take medication for her pain. She further testified that she has occasional headaches once or twice a month. The Petitioner testified that she never suffered an injury to her head, back or left lower extremity before the October 6, 2008 work accident and that, when she reported to work on October 6, 2008, she was not experiencing any difficulties with her head, back or left lower extremity. The Petitioner testified that she would like to undergo the spinal cord stimulator trial prescribed by Dr. Lubenow.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Petitioner sustained undisputed accidental injuries which arose out of and in the course of her employment with the Respondent when she fell off the air stairs of a plane she was cleaning and landed on the ground approximately 5-6 feet below. Immediately following the injury she sought medical treatment at Physicians Immediate Care where a history of falling and twisting her left ankle was recorded and complaints of pain in her left ankle and left leg were noted. It was noted that there was swelling in the ankle and the assessment was a left ankle sprain. The records of Physicians Immediate Care reflect that the Petitioner continued to follow up for her left ankle sprain/strain and a rib contusion and continued to complain of occasional ankle pain. On October 29, 2008, the assessment was "left ankle sprain, improving" and the Petitioner was released to return to full duty work. On November 19, 2008, the Petitioner followed up at Physicians Immediate Care and complained of a relapse of her left ankle pain. The Arbitrator notes that there is no mention of any head or back injury or complaints noted in the records of Physicians Immediate Care.

The Petitioner next sought treatment with her primary care provider, Dr. Gayle Crays, on December 5, 2008. At that time the Petitioner complained of ankle pain and Dr. Crays assessment was an ankle strain/sprain. There is no mention of any head or back injury or complaints noted in the records of that visit.

On January 15, 2009 the Petitioner was seen by Dr. Bush who noted that the Petitioner had complaints of a burning sensation in her left calf, pain in her left ankle and tingling in the bottom on her left foot. Dr. Bush diagnosed the Petitioner with common peroneal neuropraxia, and he prescribed an articulating AFO brace, pain medication, and continued physical therapy. There is no mention of any head or back injury or complaints noted in the records of that visit.

On February 10, 2009, the Petitioner was notified that her employment with the Respondent was terminated effective February 5, 2009.

On March 10, 2009 the Petitioner returned to Dr. Crays "for referral to neurology at the suggestion of her lawyer." It was noted that the Petitioner's left ankle was improving but she "still has foot drop". The Petitioner reported that she had headaches and vision changes from time to time that might be from her fall. Dr. Crays' assessment was unspecified head injury and muscle weakness, and she referred the Petitioner for a neurology consult. The Arbitrator notes that this is the first occurrence in the medical records of any head injury or complaints and there is no mention of any back injury or complaints in the record of that visit. A brain MRI was normal and a lumbar MRI was reported to demonstrate a very small central disc protrusion at L5-S1 with no other abnormalities.

On May 7, 2009, the Petitioner saw Dr. O'Leary who noted that the Petitioner complained of pain in her left thigh and left lower leg and "some associated back pain". The Arbitrator notes that this is the first time that complaints of back pain are specifically noted in the medical records.

Thereafter, the Petitioner continued to complain of pain in her left lower extremity and lower back and she continued to seek treatment for those complaints. The Petitioner was ultimately diagnosed with complex regional pain syndrome and was prescribed a spinal cord stimulator trial.

Dr. Lubenow and Dr. O'Leary both opined that the Petitioner's condition of complex regional pain syndrome was causally related to the work injury of October 6, 2008 and that the trial spinal cord stimulator was reasonable and necessary medical treatment for the Petitioner. Dr. Ruge, the Respondent's examining physician, testified that his examination of the Petitioner revealed marked inconsistencies and symptom magnification. Dr. Ruge opined that as a result of the work injury of October 6, 2008, the Petitioner suffered a left ankle strain, a possible concussion, and mild soft tissue trauma. Dr. Ruge further opined that it was possible that the Petitioner has complex regional pain syndrome and he indicated he would defer to Dr. Lubenow as to whether the Petitioner should undergo a trial of a spinal cord stimulator.

While the Arbitrator notes that Petitioner did undergo various diagnostic studies which were reported to demonstrate small disc protrusions at L4-5, L5-S1, and T10-11, Dr. O'Leary noted that those findings did not fit with the Petitioner's symptoms. Additionally, the medical records do not demonstrate that the Petitioner had any complaints of back or head problems

until March of 2009, five months after her accident, and one month after her employment with the Respondent was terminated. Further, no physician specifically opined that those findings were causally related to the Petitioner's work injury. Additionally, the Arbitrator notes that EMG studies of the Petitioner's brain and left lower extremity were reported to be normal.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current condition of complex regional pain syndrome is causally related to the injury of October 6, 2008. In so finding, the Arbitrator notes the records of the Petitioner's treating physicians which demonstrate that the Petitioner suffered an injury to her left ankle which eventually led to a diagnosis of complex regional pain syndrome – type 1, the deposition testimony of Dr. Lubenow and Dr. O'Leary, and the deposition testimony of Dr. Ruge, the Respondent's examining physician. The Arbitrator further finds, however, that the Petitioner failed to prove any specific current condition of ill-being in her head or lumbar spine which is causally related to that injury.

In Support of the Arbitrator's Decision relating to (G.), What were Petitioner's earnings, the Arbitrator finds and concludes as follows:

The Petitioner earned $1,235.00 during the 4 weeks ($308.75 per week) she was employed by the Respondent prior to the October 6, 2008 accident. The Petitioner testified that after she obtained employment with the Respondent she worked 13 hours per week at her family's bakery and was paid $16.00 per hour for that work. As such, the Petitioner earned $208.00 per week from her concurrent employment during the relevant time period. The Petitioner testified that the Respondent was aware of her concurrent employment, having been so advised during the interview process and thereafter through her conversations with her supervisor, Chris. The Petitioner's testimony in that regard was not contradicted or rebutted.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's average weekly wage was $516.75.

In Support of the Arbitrator's Decision relating to (J.), Were the medical services that were provided to Petitioner reasonable and necessary/Has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds and concludes as follows:

The Petitioner introduced evidence of medical expenses totaling $33,428.61which were incurred by the Petitioner as a result of her injury of October 6, 2008. The Respondent disputed liability for the Petitioner's medical expenses but did not dispute their reasonableness or necessity. The Respondent specifically disputed its liability for the expenses resulting from the Petitioner's medical treatment which occurred after March 23,

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2009, Dr. Bush's last date of treatment. Accordingly, having found that the Petitioner's current condition of complex regional pain syndrome is causally related to the accident, the Arbitrator awards the following medical expenses that were offered into evidence by Petitioner, subject to the medical fee schedule, and directs the Respondent to hold the Petitioner harmless from any claims made by the Illinois Department of Health and Family Services (formerly the Illinois Department of Public Aid) for payments that were made on said bills:

Medical Providers	**Charged Amount**
Physicians Immediate Care	$5,132.90
Swedish American Medical Group/Dr. Gayle Crays	408.00
Rockford Orthopedic Associates/Dr. William Bush	3,103.00
Saint Anthony Medical Center	126.00 318.00
Rush University Neurosurgery/Dr. Shaun O'Leary	6,260.00
Rush University Medical Center	2,242.25 11,420.46
Medical Pain Management Services, Ltd./Dr. John Jaworowicz	1,350.00
University Anesthesiologists, S.C./Dr. Asokumar Buvanendran/Dr. Timothy Lubenow	3,068.00
Total:	$33,428.61

The Respondent is entitled to a credit for payments it has made for medical expenses incurred by the Petitioner as a result of her injuries.

In Support of the Arbitrator's Decision relating to (K.), Is Petitioner entitled to any prospective medical care, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issue of causation are adopted and incorporated herein.

The Arbitrator has found that the Petitioner's current condition of complex regional pain syndrome is causally related to the injury of October 6, 2008. Dr. Lubenow and Dr. O'Leary have prescribed a spinal cord stimulator trial for the Petitioner and opined that such treatment was reasonable, necessary, and causally related medical treatment for the Petitioner. Dr. Ruge opined that it was possible that the Petitioner has complex regional pain syndrome and he indicated he would defer to Dr. Lubenow as to whether the Petitioner should undergo a trial of a spinal cord stimulator. Therefore, the Arbitrator finds that the spinal cord stimulator trial prescribed for the Petitioner by Dr. Lubenow is reasonable, necessary, and causally related medical treatment to which the Petitioner is entitled. The Respondent is therefore ordered to authorize, and pay all of the reasonable and necessary medical expenses associated with, the spinal cord stimulator trial prescribed for the Petitioner by Dr. Lubenow.

In Support of the Arbitrator's Decision relating to (L.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issue of causation are adopted and incorporated herein.

The Petitioner claimed to be entitled to temporary total disability benefits for October 7 and 8, 2008 and from February 5, 2010 through the date of hearing, March 6, 2013, a period of 160-1/7 weeks. The Respondent claimed that the Petitioner was disabled form December 19, 2008 through February 27, 2009 and from May 29, 2009 through June 25, 2009, a period of period of 14 1/7 weeks.

The evidence demonstrates that the Petitioner was taken off work for two days when she was seen at Physicians Immediate Care on October 6, 2008. The Petitioner then returned to work for the Respondent doing secretarial work until she was released to return to full duty work on October 29, 2008. The Petitioner testified that she did return to regular work at that time but she began to experience severe pain in her left leg and ankle again. On November 24, 2008 the Petitioner was given restrictions of sit down work only and on December 18, 2008 those restrictions were continued. On February 10, 2009, the Petitioner was notified that her employment with the Respondent was terminated effective February 5, 2009. Following her termination, the Petitioner continued to seek medical treatment from Dr. Crays, Dr. Bush and Dr. O'Leary. In September of 2009, Dr. O'Leary placed the Petitioner on work restrictions of sedentary work only with no lifting over 10 pounds, no prolonged sitting and no prolonged standing. In February of 2009 Dr. O'Leary recommended a spinal cord stimulator trial. The Petitioner thereafter treated with Dr. Lubenow who prescribed a spinal cord stimulator trial for

the Petitioner. The Petitioner has been unable to obtain that treatment through the present time.

While there are no specific off work slips contained in the records of the Petitioner's treating physicians subsequent to her release to return to regular work on October 29, 2008, she was given work restrictions on November 24, 2008 and she remained under those work restrictions at the time of her termination by the Respondent as of February 5, 2009. The Petitioner had not reached maximum medical improvement from her injuries as of that date and she continued to receive medical treatment thereafter. The Petitioner's physicians testified that the Petitioner continues to be subject to work restrictions and continues to be in need of medical treatment, specifically a spinal cord stimulator trial. Thus, the Petitioner has not yet reached maximum medical improvement from her injury and is entitled to temporary total disability benefits.

Therefore, having previously found that the Petitioner's present complex regional pain syndrome condition is causally related to her October 6, 2008 work accident, the Arbitrator finds that the Petitioner is entitled to temporary total disability benefits of $344.50 per week from October 7, 2008 through October 8, 2008 and from February 5, 2010 through March 6, 2013, a period of 160 1/7 weeks.

The Arbitrator notes that the Petitioner testified that she began receiving unemployment benefits from the State of Illinois shortly after her termination by the Respondent and that those benefits continued until February 2010. As the Arbitrator has awarded the Petitioner temporary total disability benefits for that period of time, the Arbitrator finds that the Petitioner is obligated to repay to the State of Illinois all of the unemployment insurance benefits she received.

In Support of the Arbitrator's Decision relating to (M.), Should penalties or fees be imposed upon Respondent, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issue of causation are adopted and incorporated herein.

The Arbitrator notes the Petitioner was initially diagnosed as having suffered an ankle strain/sprain injury. The Petitioner was taken off work for only two days and, after a short period of light duty work, the Petitioner was released to return to regular unrestricted work. The Petitioner returned to regular work and performed her regular duties for about three weeks before resuming medical treatment for what was diagnosed as an ankle strain/sprain. The Petitioner was again placed on work restrictions and her employment was subsequently terminated. Following her termination, the Petitioner applied for and received unemployment insurance benefits. The Arbitrator notes that in order to have received unemployment insurance benefits, the Petitioner would have been required to certify to the State of Illinois, that she was able and available to work. The Petitioner thereafter continued a protracted course of treatment for her ankle and underwent numerous objective tests which were normal

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or did not demonstrate an objective basis for her complaints. The Petitioner's protracted course of treatment eventually led to a diagnosis of complex regional pain syndrome.

Dr. Ruge, the Respondent's examining physician, reviewed the records of the Petitioner's medical treatment and the video recordings of the surveillance conducted on the Petitioner. Dr. Ruge testified that his examination of the Petitioner revealed marked inconsistencies and symptom magnification and that those examination findings were supported by the Petitioner's activities as shown in the video of surveillance conducted on the Petitioner. Dr. Ruge was of the opinion that as a result of the 2008 incident, Petitioner suffered a left ankle strain, with evidence of a history of concussion, and a mild soft tissue trauma, but nothing else. Dr. Ruge further opined that Petitioner did not suffer any permanent disability as a result of the October 6, 2008 accident and that, by the time of his deposition of March 20, 2012, she had been at MMI for a significant amount of time.

Based upon the totality of the evidence in the record, the Arbitrator finds that the Respondent's denial of benefits to the Petitioner was not objectively unreasonable under the circumstances. The Arbitrator, therefore, declines to award penalties in the instant matter.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Todd Hall,
Petitioner,

vs. NO. 11 WC 025567

Advance Packaging Technology Laboratories,
Respondent.

14IWCC0132

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Illinois, Cook County. The Circuit Court reversed the Commission Decision related to the calculation of temporary partial disability benefits and remanded the matter "for a recalculation of TPD benefits due to Todd Hall using the gross earnings rather than the net from 6/28/11 forward."

Based on the Circuit Court's findings, the Commission hereby sets aside its Decision and Opinion on Review issued on December 17, 2012 (modifying the Decision of the Arbitrator filed on April 18, 2012) and issues a Decision and Order on Circuit Court Remand in accordance with the Circuit Court's September 11, 2013 Order.

This case was initially heard by Arbitrator Flores who filed her Decision on April 18, 2012. Arbitrator Flores found that Petitioner's temporary permanent disability award should be calculated pursuant to the version of the Act in effect at the time of the injury, January 26, 2011. Arbitrator Flores calculated the temporary partial disability, subtracting the ***net*** amount Petitioner was earning in his modified position from the average amount that he would have been able to earn at the time he was working light duty had he been able to fully perform his regular duties. Penalties and fees were denied. The Commission modified the Arbitrator's award of temporary partial disability to clarify her Decision and include credit that had been omitted. The remainder of the Arbitrator's Decision was affirmed and adopted.

Respondent appealed the Commission Decision to the Circuit Court of Cook County, which by order of September 11, 2013, reversed and remanded the temporary partial disability portion of the Commission Decision with directions to recalculate the temporary partial disability benefits using Petitioner's ***gross*** earnings, rather than his ***net*** earnings, at his modified position. No other issues were addressed by the Court.

At the time of Petitioner's injury, on January 26, 2011, §8(a) of the Act provided that the temporary partial disability rate should be equal to two-thirds of the difference between the average amount that the employee would have been able to earn in the full performance of the job in which he was engaged at the time of accident and the ***net*** amount he earned in the modified job. On 6/28/11, §8(a) was amended to provide temporary partial disability at two-thirds the difference between the full performance earnings and the ***gross*** amount earned in the modified job. This amendment resulted in a reduction in the amount of temporary partial disability for which Respondent is liable, so the application of the amended version, as ordered by the Circuit Court, will reduce Petitioner's temporary partial disability award significantly.

According to the rules of statutory construction, the version of §8(a) that is to be applied is determined by whether the amendment is considered ***substantive*** or ***procedural***. Substantive amendments are generally not applied retroactively, but procedural amendments may be so applied. In the Arbitrator's Decision and the Commission's Decision on Review affirming and adopting that decision, the Commission found the amendment to be ***substantive***, as it affected Petitioner's ***substantive*** right to temporary partial disability benefits under the Act. Respondent argued before the Commission, and the Circuit Court found, that Petitioner's ***substantive*** right to temporary partial disability was not affected by the amendment. The Court implicitly found that the method of calculating temporary partial disability was not a ***substantive*** provision, but merely ***procedural***, and therefore should have been applied retroactively to calculate Petitioner's temporary partial disability.

Pursuant to the Circuit Court's directions, the Commission calculates Petitioner's temporary partial disability as follows:

	Income			
	Full Duty	Light Duty		
Dates worked	Potential	Gross	Difference	TPD owed
6/30-7/6/11	$800.00 -	$298.00 =	$502.00 x 2/3 =	$334.67
7/7-7/13/11	$800.00 -	$338.00 =	$462.00 x 2/3 =	$308.00
7/14-7/20/11	$800.00 -	$326.00 =	$474.00 x 2/3 =	$316.00
7/21-7/27/11	$800.00 -	$389.00 =	$411.00 x 2/3 =	$274.00
7/28-8/3/11	$800.00 -	$374.00 =	$426.00 x 2/3 =	$284.00
8/4-8/10/11	$800.00 -	$338.00 =	$462.00 x 2/3 =	$308.00
8/11-8/17/11	$800.00 -	$350.00 =	$450.00 x 2/3 =	$300.00
8/18-8/24/11	$800.00 -	$368.00 =	$432.00 x 2/3 =	$288.00
8/25-8/31/11	$800.00 -	$336.00 =	$464.00 x 2/3 =	$309.33
9/1-9/7/11	$800.00 -	$426.00 =	$374.00 x 2/3 =	$249.33
9/8-9/14/11	$800.00 -	$353.00 =	$447.00 x 2/3 =	$298.00
9/15-9/21/11	$800.00 -	$353.00 =	$447.00 x 2/3 =	$298.00
9/22-9/28/11	$800.00 -	$338.00 =	$462.00 x 2/3 =	$308.00
9/29-10/5/11	$800.00 -	$374.00 =	$426.00 x 2/3 =	$284.00
10/6-10/12/11	$800.00 -	$380.00 =	$420.00 x 2/3 =	$280.00
10/13-10/19/11	$800.00 -	$374.00 =	$426.00 x 2/3 =	$284.00
10/20-10/26/11	$800.00 -	$386.00 =	$414.00 x 2/3 =	$276.00
10/27-11/2/11	$800.00 -	$639.38 =	$160.62 x 2/3 =	$107.08
11/3-11/9/11	$800.00 -	$808.13 =	NO LOSS	---
11/10-11/16/11	$800.00 -	$667.50 =	$132.50 x 2/3 =	$ 88.33
11/17-11/23/11	$800.00 -	$810.00 =	NO LOSS	---

11/24-11/30/11	$800.00 - $717.50 =	$ 82.50 x 2/3 =	$ 55.00
12/1-12/7/11	$800.00 - $735.00 =	$ 65.00 x 2/3 =	$ 65.00
12/8-12/14/11	$800.00 - $822.08 =	NO LOSS	---
12/15-12/21/11	$800.00 - $847.50 =	NO LOSS	---
12/22-12/28/11	$800.00 - $652.50 =	$147.50 x 2/3 =	$ 98.33
12/29/11-1/4/12	$800.00 - $785.20 =	$ 14.80 x 2/3 =	$ 9.87
1/5-1/11/12	$800.00 - $686.50 =	$113.50 x 2/3 =	$ 75.67
1/12-1/18/12	$800.00 - $660.05 =	$139.95 x 2/3 =	$ 93.30
1/19-1/25/12	$800.00 - $667.50 =	$132.50 x 2/3 =	$ 88.33
1/26-2/1/12	$800.00 - $696.30 =	$103.70 x 2/3 =	$ 69.13
2/2-2/8/12	$800.00 - $712.50 =	$ 87.50 x 2/3 =	$ 58.33
2/9-2/15/12	$820.00*-$694.50 =	$125.50 x 2/3 =	$ 83.67

TOTAL TPD OWED BY RESPONDENT **$5,891.37**

The modification ordered by the Circuit Court results in a reduction in temporary partial disability from the amount ordered by the Arbitrator in the amount of $2,548.25.

The parties stipulated prior to hearing that Respondent paid and should receive credit for payment of $4,203.26 in temporary partial disability and $165.67 in overpayment of temporary total disability. The Commission finds that these amounts should be credited against Respondent's liability for $5,891.37 for temporary partial disability, leaving $1,522.44 net liability.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $1,522.44 in underpaid temporary partial disability benefits. The Commission finds that Petitioner is entitled to a total of $5,891.37 in temporary partial disability benefits for the 33-3/7 week period from June 27, 2011 through February 15, 2012. The parties agreed that Respondent is entitled to a credit of $4,203.26 for temporary partial disability payments and $165.67 in overpayment of temporary total disability payments, leaving $1,522.44 for the net underpayment of temporary total and partial disability payments.

IT IS FURTHER ORDERED BY THE COMMISSION that penalties and fees under Sections 19(k), 19(l) and 16 of the Act are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0132

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 25,2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

drd/dak
o-01/28/14
68

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RAYMOND JONES,

Petitioner,

vs.

14IWCC0133

NO: 12 WC 44243

KELLY SERVICES, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical, prospective medical, and temporary total disability (TTD) and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission modifies the Decision of the Arbitrator and finds that Mr. Jones failed to prove that he was temporary and totally disabled from December 21, 2012 through January 8, 2013. Dr. Bruce Summerville examined Mr. Jones on December 20, 2012. Dr. Summerville provided Petitioner with left arm restrictions consisting of no lifting, carrying, pushing or pulling greater than 10 pounds, and no overhead work. PX.2. The Petitioner testified that his supervisor, Eloy Vela, offered him light duty work. T.35. The Petitioner, however, did not return to work as it was his belief that Mr. Vela terminated him. *Id.*

The Commission finds that the Petitioner's testimony as to his alleged termination is not supported by the evidence. The Petitioner's testimony is contradicted by both Mr. Vela and Paul McConnell. Mr. Jones testified that he informed Mr. Vela of his work restrictions and light duty work was provided to him. However, he then testified that he was terminated by Mr. Vela. Mr. Vela testified that he never spoke to the Petitioner after December 5, 2012. Further, Mr. McConnell testified that, as the Branch Manager for Kelly Services, he would have been made

14IWCC0133

aware of the Petitioner's termination. However, he never received such notice. T.74.- T.75. There is no credible evidence supporting Petitioner's testimony regarding the alleged termination. Further, there is no evidence indicating that the Petitioner was unable to work light duty from December 21, 2012 through January 8, 2013.

Therefore, the Commission modifies the Decision of the Arbitrator and finds that Petitioner is not entitled to TTD benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 6, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,724.00 for medical expenses under §8(a) of the Act pursuant to the fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for the MR arthrogram as recommended by Dr. Summerville and Dr. Tonino.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 2 6 2014

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
2/10/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0133

JONES, RAYMOND D
Employee/Petitioner

Case# **12WC044243**

KELLY SERVICES INC
Employer/Respondent

On 5/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0512 NOONAN PERILLO POLENZANI & MARKS
JASON S MARKS
25 N COUNTY ST
WAUKEGAN, IL 60085

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
KAREN A HAARSGAARD
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602-4195

STATE OF ILLINOIS)
)SS.
COUNTY OF McHenry)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Raymond D. Jones
Employee/Petitioner

v.

Kelly Services, Inc.
Employer/Respondent

Case # **12** WC **44243**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Waukegan**, on **March 25, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **12/3/12**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$1,669.20**; the average weekly wage was **$333.84**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **2** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $286.00/week for 2 5/7 weeks, commencing 12/21/12 through 1/8/13, as provided in Section 8(b) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,057 to Advocate Condell Medical Center, $36.00 to Lake County Radiology, and $631 to Illinois Bone and Joint-Lake Shore Orthopedics, as provided in Sections 8(a) and 8.2 of the Act.

Other

Respondent shall authorize and pay for MR arthrogram recommended by Dr. Summerville and Dr. Tonino.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Edwin Lee
Signature of Arbitrator

5/6/13
Date

ICArbDec19(b)

MAY - 6 2013

Illinois Workers' Compensation Commission

Raymond Jones Employee/Petitioner	)		
v.	)	Case No.:	12 WC 44243
Kelly Services, Inc. Employer/Respondent	)	Setting:	Woodstock

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ARBITRATOR'S 19(b) DECISION

FINDINGS OF FACT

Testimony of Raymond Jones

Petitioner began employment with Respondent, a temporary agency, in approximately September of 2012. His first job assignment was with Baxter. In November of 2012 he was reassigned by Respondent and placed at Medela in McHenry.

Medela assembles and distributes breast pumps. Petitioner was placed on an assembly line at Medela where he was charged with packing product into boxes, pushing the boxes through a taping machine and then loading the boxes onto a pallet.

On December 3, 2012, Petitioner was loading four to five boxes at a time from the assembly line to the pallet. Petitioner did not stack the boxes on top of each other in order to move them. Rather, he pushed four to five boxes together, side by side, placed his hands around the outermost box on each side, squeezed the boxes together and transported them to the pallet. Petitioner stacked the pallet to about eye level after which he was forced to reach overhead. As Petitioner was stacking boxes overhead he felt and heard a pop in his left shoulder.

Petitioner reported the incident to Eloy Vela, an onsite supervisor from Respondent. Eloy instructed Petitioner to speak with a nurse from Medcor about the injury. Petitioner was instructed to go home, apply ice to his shoulder and use over the counter medication. While at home that day Petitioner noticed a deformity in his left shoulder and his girlfriend helped him maneuver the shoulder back in place.

In light of ongoing problems with his shoulder, Petitioner called in sick to work the following day. He returned to work on December 5, 2012, but was instructed to perform light duty. Petitioner was eventually seen in the emergency room at Condell Medical Center on December 7, 2012, with complaints of left shoulder pain. He was referred to an orthopedic surgeon for further care and treatment.

Petitioner saw Dr. Summerville of Illinois Bone and Joint Institute on December 20, 2012. He was provided with an injection and given light duty work restrictions. The injection helped, but wore off after a short period of time. Petitioner returned to see Dr. Summerville on January 10, 2013, at which time he recommended an MR arthrogram of the left shoulder. He also provided Petitioner with additional light duty work restrictions at that time.

Petitioner has not worked since December 6, 2012. He has not been paid any temporary total disability benefits. Petitioner was advised of Respondent's light duty offer of employment shortly after Ben McConnell's letter of January 7, 2013. Petitioner testified that he left a message for Ben McConnell in response to the job offer, but received no response.

Notwithstanding the documentation submitted by Respondent, Petitioner did not actually receive payment from Respondent for the period of time beyond which he last worked on December 6, 2012.

Testimony of Eloy Vela

Eloy Vela is a senior staffing supervisor for Kelly Services. He works at Medela in McHenry. Petitioner advised him of an injury to his left shoulder on December 3, 2012. He instructed petitioner to contact Medcor regarding the incident.

Petitioner called in sick to work on December 4, 2012. When he returned to work on December 5, 2012, he was placed in the "rework" area so he could perform light duty. Petitioner's regular job did involve overhead work.

Eloy Vela did not receive any messages or contact from Petitioner after his last day worked.

Testimony of Paul Ben McConnell

Ben McConnell is the branch manager for Kelly Services. He offered Petitioner light duty to begin on January 9, 2013, pursuant to his letter of January 7, 2013. He denies receiving any contact from Petitioner in response to this job offer.

He testified regarding Respondent's payroll system and payroll records. Employees are paid by direct deposit or on a company issued debit card. The records do not reflect whether Petitioner was paid by direct deposit or debit card. Ben McConnell indicated that the records reflect that Petitioner was paid for days beyond December 6, 2012. However, the records do not reflect, and he has no way to determine, whether Petitioner actually received those funds.

Eloy Vela is the onsite supervisor for Respondent at Medela. Espe Hart would have been Petitioner's supervisor at Medela. It was the responsibility of Respondent's supervisor, Eloy Vela, to approve any payroll requests.

Medical Records

Petitioner was seen in the emergency room at Condell Medical Center on December 7, 2012. At that time he reported having sustained an injury to his left shoulder four days ago at work while lifting boxes. PX 1, p. 21. He was noted to have symptoms of pain with range of motion and that he "could not move the shoulder/elevate the shoulder" after the injury. PX 1, p. 21. Physical examination indicated tenderness to the left lateral shoulder. PX 1, p. 22. Petitioner's left shoulder was x-rayed, he was diagnosed with a left shoulder strain and referred to an orthopedic surgeon. PX 1, p. 23 – 25.

Petitioner was next seen at Illinois Bone and Joint by Dr. Bruce Summerville on December 20, 2012. PX 2, p. 10. At that time he reported that he was injured at work on December 3, 2012, while lifting boxes. PX 2, p. 10, 12. He was noted to have ongoing pain in the anterior superior shoulder region and with overhead motion. PX2, p.12. He denied any prior problems with regard to his shoulder. PX 2, p. 12. Physical examination noted tenderness of the left shoulder and "positive impingement" sign. PX 2, p. 12. Dr. Summerville diagnosed Petitioner with a left shoulder sprain and impingement syndrome, provided him with a cortisone injection and light duty work restrictions of no lifting, pushing, carrying or pulling greater than 10 pounds with the left arm as well as no overhead work. PX 2, p. 12, 13, 17.

Petitioner returned to see Dr. Summerville on January 10, 2013. PX 2, p. 8. Dr. Summerville noted that the injection provided relief for about a week, but that the symptoms returned. PX 2, p. 8. He noted pain over the lateral deltoid region and, particularly, with overhead motion. PX 2, p. 8. Physical examination demonstrated a positive impingement and positive SLAP sign. PX 2, p. 8. Dr. Summerville's assessment was "left shoulder sprain" and he provided Petitioner with a prescription to obtain an MR arthrogram. PX 2, p. 9-9, 14. He also provided Petitioner with ongoing work restrictions of no lifting, carrying, pushing or pulling with the left hand greater than 10 pounds as well as no overhead work. PX 2, p. 9, 16.

IME – Dr. Tonino

Petitioner was seen by Dr. Tonino for a Section 12 examination on February 21, 2013. He provided a history of an injury to his left shoulder that he sustained on December 3, 2012, while "lifting four to five boxes to stack them on top of other boxes which were on a pallet." At that time he felt a painful pop in his left shoulder. At the time of the IME, Petitioner continued to complain of pain in his left shoulder and, particularly, with overhead activities. See RX 6.

Dr. Tonino examined Petitioner and noted that his elevation was significantly decreased on the left as compared to the right (100 degrees versus 160 degrees). Likewise, his external rotation was noted to be limited on the left as compared to the right (30 degrees versus 60 degrees). Dr. Tonino noted "pain with rotator cuff testing of the left shoulder." See RX 6.

Dr. Tonino reviewed Petitioner's records from Condell Medical Center and Dr. Summerville. After his review of the records and examination of Petitioner, his impression was "possible labrel tear and subacromial impingement" of the left shoulder. His opinion is that " an MRI arthrogram is indicated." Dr. Tonino specifically stated that it was his opinion that "the patient's left shoulder condition is related to the injury that occurred on the 3rd of December,

2012." The basis for his opinion is Petitioner's lack of any prior shoulder problems, the fact that it was reported on the day of the injury and that the mechanism of injury is consistent with examination findings. Dr. Tonino indicated that Petitioner has not reached maximum medical improvement since further diagnostic testing is indicated. He is capable of working with a five pound lifting restriction with no overhead or repetitive use of the left arm. Petitioner's subjective symptoms are consistent with his objective findings and there is no evidence of symptom magnification. See RX 6.

IN SUPPORT OF THE ARBITRATOR'S DECSION REGARDING C (ACCIDENT), THE ARBITRATOR FINDS AS FOLLOWS

Petitioner testified regarding the work accident that occurred on December 3, 2012, and offered specific testimony regarding the mechanics of his injury. Petitioner was moving four to five boxes at a time to stack them on a pallet. Petitioner aligned the boxes side by side. In order to move them he extended his arms outward and pressed the end of each side of the row of boxes and then lifted them onto the pallet. When Petitioner reached a certain level he was forced to reach overhead at which time he heard a pop and felt pain in his left shoulder.

Petitioner testified that he reported the injury immediately to Eloy Vela, Respondent's onsite supervisor at Medela. Eloy Vela confirmed that Petitioner reported the injury on December 3, 2012.

Finally, an incident report was filled out by Espe Hart, Petitioner's supervisor at Medela, regarding the incident. PX 4. The incident report is consistent with Petitioner's testimony as to the mechanism of injury.

In light of the foregoing, the Arbitrator does hereby find that Petitioner sustained an accident on December 3, 2012, that arose out of and in the course of his employment with Respondent.

IN SUPPORT OF THE ARBITRATOR'S DECSION REGARDING F (CAUSAL CONNECTION) AND K (PROSPECTIVE MEDICAL), THE ARBITRATOR FINDS AS FOLLOWS

Petitioner spoke with a nurse at Medcor on the date of the accident and was diagnosed with a sprain/strain of the left shoulder. RX1. He was seen in the emergency room at Condell Medical Center four days later on December 7, 2012, where he was also diagnosed with a shoulder strain and given instructions to follow-up with an orthopedic surgeon. PX 1, p. 24. Petitioner sought treatment with Dr. Bruce Summerville of Illinois Bone and Joint Institute and was first seen on December 20, 2012. PX 2, p. 12 -13. Dr. Summerville diagnosed Petitioner with a left shoulder sprain and impingement syndrome and provided him with an injection. PX 2, p. 12 – 13. Petitioner returned to see Dr. Summerville on January 10, 2013. PX 2, p. 8. It was noted that the injection provided minimal relief and he had continued symptoms of left shoulder pain especially with overhead motion. PX 2, p. 8 – 9. Dr. Summerville recommended an MR arthrogram. PX 2, p. 9, 14.

Dr. Tonino, Respondent's examining physician, examined Petitioner as well as reviewed his medical records. His impression is that Petitioner has a possible labrel tear and subacromial impingement of the left shoulder and that this condition is related to the work accident that occurred on December 3, 2012. RX 6. Dr. Tonino cited a lack of any prior injury to Petitioner's left shoulder, the fact that it was reported on the date of incident and noted the mechanism of injury to be consistent with his examinations findings as the basis for his opinion. RX 6. Dr. Tonino noted that Petitioner's subjective complaints are consistent with his objective findings and that there is no evidence of symptom magnification. RX6. He concurs with the recommendation for an MR arthrogram. RX 6.

In light of the above, the Arbitrator does hereby find that the Petitioner's condition of ill-being is causally related to the work accident that occurred on December 3, 2012. The arbitrator further orders Respondent to authorize and pay for the MR arthrogram recommended by Dr. Summerville and Dr. Tonino.

IN SUPPORT OF THE ARBITRATOR'S DECSION REGARDING J (RESONABLE AND NECESSARY MEDICAL SERVICES), THE ARBITRATOR FINDS AS FOLLOWS

Based on the Arbitrator's decision regarding C (accident) and F (causal connection) the Arbitrator hereby orders Respondent to pay Petitioner's reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,057.00 to Advocate Condell Medical Center, $36.00 to Lake County Radiology and $631.00 to Illinois Bone and Joint – Lake Shore Orthopedics.

IN SUPPORT OF THE ARBITRATOR'S DECSION REGARDING L (TEMPORARY TOTAL DISABILITY), THE ARBITRATOR FINDS AS FOLLOWS

While Petitioner did not work after December 6, 2012, he did not have work restrictions until being seen by Dr. Summerville on December 20, 2013. PX 2, p. 12, 17. Respondent did not offer light duty employment to Petitioner until January 9, 2013, as indicated in Ben McConnell's letter of January 7, 2013. PX 5. Petitioner declined Respondent's offer of light duty employment pursuant to his email that was sent on January 10, 2013. RX 7.

In light of the above, the Arbitrator finds that the Petitioner is entitled to temporary total disability benefits for the period December 21, 2012, through January 8, 2013, or a period of 2 and 5/7ths weeks. As Petitioner's average weekly wage is $333.84 and he has two dependents, Petitioner is entitled to the statutory minimum temporary total disability rate of $286.00 per week. AX 1, paragraph 5 and 6.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TERRY BONE,

Petitioner,

14IWCC0134

vs.

NO: 11 WC 43241

ARAMARK MANAGEMENT SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Decision of the Arbitrator and finds that the Petitioner sustained fifteen percent loss of use of the right foot as the result of his September 23, 2011 work-related accident.

According to Section 8.1(b) of the Act, for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American

Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Mr. Bone was 39 years old when he sustained a right Achilles laceration on September 23, 2011. He underwent open repair of the Achilles tendon on September 26, 2011. PX.4. The Petitioner returned to work full-duty and without restriction on August 10, 2012. PX.3. He currently performs the same duties as he did prior to the accident and earns fifty cents more per hour than he did prior to the accident. T.13, T.19. Subjectively, the Petitioner experiences some pain while pushing a cart uphill. T.17. He also experiences some tightness in the morning or if it is cold outside. *Id.* He will also develop a shooting pain up to the kneecap, while walking on uneven ground. The shooting pain causes his knee to buckle. *Id.* The Petitioner testified that he has not sought medical treatment since August 2012 and does not take pain medication. T.20.

Dr. John Krause performed an AMA rating. He found Petitioner has a six percent combined lower extremity impairment which converts to a two percent person-as-the-whole impairment. RX.3. pg.5. Dr. Krause testified that the Petitioner has atrophy of the calf, thickening of the Achilles tendon and diminished range of motion, all of which are permanent. RX.3. pg.30. Dr. Krause found that the Petitioner has satisfactory alignment, full hind foot motion, satisfactory plantar flexion and normal sensibility. *Id.*

Applying Section 8.1(b) to the above facts, the Commission finds that the Petitioner sustained 15% loss of use of the right foot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 30, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $489.92 per week for a period of 25.05 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the Petitioner 15% loss of use of the right foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

14IWCC0134

interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 2 6 2014

MJB/tdm
O: 2-10-14
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0134

BONE, TERRY
Employee/Petitioner

Case# **11WC043241**

ARAMARK
Employer/Respondent

On 8/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC
NATHAN BECKER
3673 HWY 111 PO BOX 488
GRANITE CITY, IL 62040

0560 WIEDNER & MCAULIFFE LTD
MARY SABATINO
1 N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Terry Bone
Employee/Petitioner

v.

ARAMARK
Employer/Respondent

Case # 11 WC 43241

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on July 22, 2013. By stipulation, the parties agree:

On the date of accident, September 23, 2011, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $42,459.56, and the average weekly wage was $816.53.

At the time of injury, Petitioner was 39 years of age, married with 3 dependent child(ren).

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $7,543.06 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $7,543.06. The parties stipulated that all TTD had been paid in full by Respondent.

After reviewing all of the evidence presented, the Arbitrator makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $489.92 per week for a period of 50.1 weeks because the injury sustained caused the 30% loss of use of the right foot, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS UNLESS a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE IF the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator

August 26, 2013
Date

AUG 30 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on September 23, 2011. At trial, counsel for the parties stipulated that Petitioner did sustain a work-related accident, temporary total disability benefits were paid in full and all related medical bills had either been paid or would be paid pursuant to the Act and fee schedule. Accordingly, the only disputed issue at trial was the nature and extent of disability.

Petitioner worked for Respondent as a shuttle driver and, on September 23, 2011, a cart full of mats broke loose and rolled striking the Petitioner in the back of the right foot and ankle. Following the accident Petitioner went to the ER of Gateway Regional Hospital and was diagnosed with a contusion and laceration of the right heel as well as a laceration of the right Achilles tendon.

Petitioner was subsequently treated by Dr. Craig Beyer, an orthopedic surgeon, who initially saw Petitioner on September 26, 2011. Dr. Beyer diagnosed Petitioner as having a complete traumatic laceration of the Achilles tendon. Dr. Beyer recommended that Petitioner have corrective surgery and he performed an open repair surgical procedure that same day. Following the surgery, Petitioner remained under Dr. Beyer's care and received physical therapy.

At the direction of the Respondent, Petitioner was examined by Dr. John Krause, an orthopedic surgeon, on December 12, 2011. Dr. Krause reviewed medical reports provided to him by the Respondent and examined the Petitioner. Dr. Krause opined that Petitioner had sustained a near complete laceration of the Achilles tendon which had been treated appropriately by Dr. Beyer. He also opined that Petitioner was not at MMI and that he could work but with restrictions of sitting with intermittent standing and no lifting more than 20 pounds.

Petitioner remained under Dr. Beyer's care who discharged him from treatment and released him to return to work without restrictions on January 31, 2012. When Petitioner returned to work at that time, he experienced considerable difficulties in performing his duties, in particular, pushing the heavy carts. Petitioner testified that when he was required to push these carts uphill that his ankle would roll.

Because of his continued symptoms, Petitioner was seen by Dr. Jeffrey Johnson, an orthopedic surgeon, on March 30, 2012. Petitioner informed Dr. Johnson of the history of the work-related accident and the corrective surgery performed by Dr. Beyer. He also informed Dr. Johnson that he experienced a burning pain when he attempted to push heavy carts as well as intermittent popping and pain in the ankle joint. On examination, Dr. Johnson noted that the Achilles tendon was thickened, there was ankle tenderness, atrophy of the calf musculature, a positive Tinel's sign over the sural nerve and no swelling. Dr. Johnson opined that Petitioner had sural nerve neuritis because of nerve entrapment/injury at the site of the surgical incision.

Dr. Johnson recommended Petitioner continue with rehabilitation and that he have an MRI scan performed. An MRI was performed on May 11, 2012, which revealed significant thickening of the Achilles tendon but no other pathology. Dr. Johnson saw Petitioner that same day and his

condition was improved. Dr. Johnson's examination revealed tenderness of the area of the surgical incision and a full range of motion but there was still right calf atrophy. Dr. Johnson opined that no surgery was indicated and that the sural nerve sensitivity would improve with therapy. Dr. Johnson authorized Petitioner to return to work with an 800 pound pushing restriction. Dr. Johnson saw Petitioner again on August 10, 2012, and Petitioner's complaints and findings on examination, including the calf atrophy, were consistent with the prior examination of May 11, 2012. Dr. Johnson released Petitioner to return to work without restrictions and discharged him from care.

On December 10, 2012, Petitioner was examined for the second time by Dr. Krause. On examination Dr. Krause noted a slightly diminished range of motion and also observed the atrophy of the right calf. He opined that there was an AMA impairment rating of six percent (6%) of the lower extremity which computed to a rating of two percent (2%) of the whole person.

Dr. Krause was deposed on June 26, 2013, and his deposition testimony was received into evidence at trial. Dr. Krause's deposition testimony was consistent with his medical reports and he reaffirmed his opinion that there was an impairment of six percent (6%) of the right lower extremity under the AMA guidelines. On cross-examination, Dr. Krause agreed that impairment and disability are two different concepts and that in arriving at Petitioner's impairment rating he did not consider Petitioner's complaints of pain. He also agreed that the diminished range of motion and calf atrophy that he observed on examination were permanent conditions.

At trial Petitioner testified that he still has pain in his ankle which goes up to his knee and that he still experiences tightness in the ankle especially during cold weather. The Petitioner also stated that he continues to experience pain whenever he has to walk on uneven ground. He did agree that he was able to return to work and perform all of his job duties. Petitioner is also presently making $.50 more per hour than he was at the time of the accident.

Conclusions of Law

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 30% loss of use of the right foot.

In support of this conclusion the Arbitrator notes the following:

Dr. Krause opined that there was an AMA impairment rating of six percent (6%) of the right lower extremity. When deposed, Dr. Krause agreed that impairment and disability are separate concepts and that Petitioner's diminished range of motion and atrophy of the calf musculature were permanent conditions.

Petitioner is employed as a shuttle driver and his job duties require him to push heavy carts and this will likely cause him to experience ongoing symptoms in his right ankle.

At the time of the accident, Petitioner was 39 years of age meaning that he will have to live with the effects of this injury for a significant period of time.

There was no evidence of the effects of this injury will have any effect on Petitioner's future earning capacity.

The medical treatment records revealed that Petitioner sustained a tear of the Achilles tendon which required surgical repair.

Dr. Johnson noted that Petitioner has thickening of the Achilles tendon, atrophy of the calf musculature and sural nerve neuritis.

Petitioner's ongoing complaints are consistent with the type of injury he sustained.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0135

Steve Oleksy,
Petitioner,
vs.

NO: 11 WC 23122

Illinois Department of Transportation,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, average weekly wage, temporary total disability benefits, medical expenses and permanency, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that in finding that Petitioner failed to prove that his condition of ill-being was causally related to the March 28, 2011 accident, the Arbitrator relied on Petitioner's medical records and found that they were "inconclusive as to whether or not Petitioner suffered a stroke the morning of March 28, 2011 prior to going to work." (Arb.Dec.5) The Arbitrator noted that Petitioner reported having suffered a visual abnormality that morning before going to work. (Arb.Dec.5, PX3) The Arbitrator also indicated that Petitioner failed to provide an expert opinion linking Petitioner's symptoms to the March 28, 2011 accident. (Arb.Dec.5)

After a complete review of the record, the Commission agrees with the Arbitrator that Petitioner complained of visual impairment when he woke up on March 28, 2011. However, the Commission notes that the record shows that despite this, Petitioner went to work and was able to do his job without problem until the undisputed work accident occurred. Furthermore, Petitioner testified that the visual impairment was only for "[a] couple of seconds." (T.36) The symptoms in question in this case are Petitioner's headaches and left side paresthesias. The medical records and Petitioner's uncontested testimony establish that these symptoms started after the work accident. The Commission further notes that as Petitioner received treatment for the injuries sustained from the work accident, Petitioner complained not of visual impairment but of ongoing headaches and left side paresthesias, symptoms which, again, according to the medical records, appeared shortly after the work accident. (PX1, PX3, PX6, PX7)

The Commission also finds that Petitioner did, in fact, provide expert opinion linking his headaches and left side paresthesias to the March 28, 2011 accident. On July 16, 2012, Petitioner called Dr. Robert R. Rivers, his treating physician, and asked if his transient ischemic attack (hereinafter "TIA") was caused by the March 28, 2011 work accident. (PX7) Dr. Rivers

reviewed the medical records and diagnostic exams and explained that Petitioner "[h]aving a vascular TIA would seem an unlikely coincidence. Seeing him after his discharge from the hospital with his dysesthesia and H/A [headache] made a post concussive injury a ***more likely consideration*** although I could not rule out a TIA." (PX7, emphasis added) Petitioner then saw Dr. Nicholas Schlageter, his neurologist, on July 17, 2012. (PX6) Dr. Schlageter specifically stated that Petitioner's "[s]ymptoms from head trauma in March resolved by November" and indicated that Petitioner's post-concussion syndrome, caused by the work accident, had resolved. (PX6) That same day, Dr. Schlageter wrote to Dr. Rivers and explained that Petitioner's diagnosis was resolved post-concussion syndrome and that the post-concussion syndrome had been "caused by overhead garage door falling and hitting [Petitioner] in head." (PX6, PX7) On July 25, 2012, Dr. Rivers read Dr. Schlageter's letter and noted that Dr. Schlageter concurred with his original finding that Petitioner's work-related head injury "was the cause of his symptoms requiring treatment." (PX7)

The Commission also notes that of all the doctors Petitioner saw while admitted at Delnor hospital, only Dr. Schlageter seemed to note and consider the work accident in his diagnosis and treatment. (PX1, PX6) Furthermore, when Petitioner followed up with Dr. Schlageter on July 21, 2011, Dr. Schlageter diagnosed Petitioner as having chronic ***post-traumatic*** headache and left side paresthesias. (PX6) Again, the Commission notes that these are symptoms that appeared after Petitioner's undisputed head injury and not before. Also, the Commission finds that Dr. Schlageter's diagnosis of chronic ***post-traumatic*** headache and left side paresthesias indicates that Petitioner's condition of ill-being is a result of the head injury and not a pre-existing condition.

Therefore, for the reasons set out above, the Commission reverses the Arbitrator's Decision regarding causation and finds that Petitioner's condition of ill-being and need for treatment was causally related to the March 28, 2011 accident. The Commission further finds that Petitioner is entitled to all medical expenses incurred in the treatment of his conditions as a result of the accident, which, as noted in the Request for Hearing form (AX1) and the Arbitrator's Decision, have already been paid by Respondent, as well as out-of-pocket payments made by Petitioner towards his medical treatment, totaling $135.00 ($75 to Delnor (PX8), $15 to Geneva Family Practice (PX9), and $20 & $25 to Tri City Neurology (PX10 & PX11)).

Regarding temporary total disability benefits, the Arbitrator found that Petitioner "was paid full wages for five days, March 29, 2011, March 30, 2011, March 31, 2011, April 1, 2011 and April 4, 2011 as part of the Collective Bargaining Agreement....Petitioner was paid TTD from March 5, 2011 through April 17, 2011." (Arb.Dec.5-6) However, the Commission notes that the Request for Hearing form indicates that Respondent did not pay any temporary total disability benefits to Petitioner. (AX1) The Commission also notes that Petitioner was kept off work from March 29, 2011 through April 16, 2011 by Dr. Rivers. (PX3) Therefore, the Commission finds that Petitioner is entitled to temporary total disability benefits from March 29, 2011 through April 16, 2011.

In his decision, the Arbitrator found Petitioner's average weekly wage to be $956.19. The Arbitrator relied on the Computation Sheet entered into evidence by both Petitioner and Respondent which shows Petitioner's salary in the year preceding the accident to be $49,722.00.

14IWCC0135

(PX5, RX2) After reviewing the Computation Sheet, the Commission notes that Petitioner's salary was divided by 52 weeks, a full year of work. However, the Petitioner's employment records indicate that Petitioner was hired by Respondent on May 16, 2010. (PX5-pg.4, RX2) Petitioner and Dan Scandiff, Respondent's tech of the yard, testified that Petitioner's first day of work for Respondent was on May 17, 2010. (T.8-9, 79) Based on the employment records and the testimony provided, Petitioner worked 316 days for Respondent (45-1/7 weeks) prior to the accident. Therefore, the Commission finds that Petitioner's average weekly wage is $1,101.44 ($49,722.00 ÷ 45-1/7).

Finally, regarding the issue of permanency, the Commission notes that Petitioner testified that his symptoms continued until they resolved in November of 2011. (T.22, 33) And as previously noted, On July 17, 2012, Dr. Schlageter also found that Petitioner's post-concussion syndrome and symptoms had resolved by November 2011. (PX6) Therefore, based on the evidence provided, the Commission finds that Petitioner has suffered a 2% loss of use of the person as a whole as result of the March 28, 2011 accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 9, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $734.29 per week for a period of 2-5/7 weeks, from March 29, 2011 through April 16, 2011, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $660.87 per week for a period of 10 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 2% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $135.00 for out-of-pocket payments made by Petitioner for medical expenses under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: FEB 26 2014
MJB/ell
o-02/11/14
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0135

OLEKSY, STEVE
Employee/Petitioner

Case# **11WC023122**

IL DEPT OF TRANSPORTATION
Employer/Respondent

On 5/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0512 NOONAN PERILLO POLENZANI & MAR
JASON S MARKS
25 N COUNTY ST
WAUKEGAN, IL 60085

5031 ASSISTANT ATTORNEY GENERAL
JILL OTTE
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1430 CMS BUREAU OF RISK MGMT
WORKERS COMPENSATION MANAGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 9 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0135

STATE OF ILLINOIS)
)SS.
COUNTY OF Wheaton)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Steve Oleksy
Employee/Petitioner

v.

Illinois Department of Transportation
Employer/Respondent

Case # 11 WC 23122

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 8, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **March 28, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the 10 months preceding the injury, Petitioner earned **$49,722.00**; the average weekly wage was **$956.19**.

On the date of accident, Petitioner was years of age, *married* with **0** dependent child.

Petitioner *has* received all reasonable and necessary medical services.

Respondent's *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit for TTD paid **March 29, 2011 through April 16, 2011**, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Based on the evidence presented at trial, including witnesses' testimony, as well as both parties' exhibits, the undersigned Arbitrator hereby denies Petitioner's Application for Benefits and makes no award in his favor.

RULES REGARDING APPEALS UNLESS a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

05-08-13
Date

MAY - 9 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

STEVE OLEKSY, Employee/Petitioner,	)	
v.	)	11 WC 23122 Chicago
ILLINOIS DEPARTMENT OF TRANSPORTATION, Employer/Respondent.	)	

ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was pursued by the Petitioner under the Workers' Compensation Act seeking relief from his employer the Illinois Department of Transportation ("IDOT"). On March 8, 2013 a hearing was held before Arbitrator Kurt Carlson at the Illinois Workers' Compensation Commission in Wheaton, Illinois. Petitioner Steve Oleksy was represented by counsel. IDOT was represented by the Illinois Attorney General's Office. After hearing the proofs and reviewing all of the evidence presented, this Arbitrator hereby makes findings on the disputed issues below and includes those findings in this document.

I. Findings of Fact

Petitioner was a seasonal Highway Maintainer ("snowbird") for IDOT on March 28, 2011 when he was hit on the stop of his head by a garage door at the Oak Brook Yard. Petitioner was working with fellow Highway Maintainer Jose Negron that day loading tractors on a trailer. While loading the tractors, Petitioner walked in and out of the garage several times. The garage door is 12' high and 20'2" wide. As Petitioner was leaving the garage for the final time, the garage door fell and hit the top of his head, causing him to fall to the ground. His head hurt and he had an immediate headache. He also started feeling numbness on his entire left side.

Petitioner continued to work until the end of his shift at 3 p.m. After talking to his wife when he got home, she decided he needed to go to Delnor Hospital's Emergency Room ("Delnor"). Julie Oleksy, Petitioner's wife, testified that when Petitioner arrived home, he looked "not quite right", his face was red, he looked tired and his "speech was off." Petitioner testified that at Delnor he complained of headache, his head hurting and numbness on his left side. Petitioner's counsel asked whether he reported to Delnor that he had double vision or blurry vision. Petitioner's response was the "only thing I could think of" was when he "woke up too fast" that morning he had difficulty with his "eyes trying to focus on two different things." Petitioner testified that he made these comments about his vision because he was repeatedly questioned about his medical condition by several doctors. On cross examination, Petitioner admitted to giving truthful information to the Delnor staff regarding his condition. Petitioner was in Delnor three days and two nights. There was no evidence of a cut, contusion, bruise or abrasion to the head in the medical records. Upon discharge, Petitioner was referred to a neurologist. Petitioner saw Dr. Schlageter and was told that his injury would resolve over time.

Petitioner testified inconsistently as to how is currently feeling. He testified that he still gets headaches and feels numbness on his left side. He also testified, however, that his symptoms resolved in November 2011, adding that his symptoms are constant, that he is unstable as far as balance, and that nothing seemed to bring on his symptoms any more than anything else.

Petitioner's medical records reveal that he presented to Delnor's emergency department on March 28, 2011 complaining that "when he woke up this morning he said his vision seemed a bit off. He says it was not blurry and it was not exactly double. He just felt like his vision was not seeing as good as it should, especially that he would see like 2 pictures on the wall in

different spots than he knew that they were." Pet. Ex. 3 at 205. Petitioner further told staff that "he was able to go to work, but he was noticing a numbness and tingling sensation, especially in his left arm going from his shoulder down to his hand as well as a much more minor feeling but in his left leg on the left side of his torso." Id. Petitioner denied any "vision loss, focal weakness, fevers, or any loss of balance." Id. Petitioner's wife told Delnor staff that "when he got home from work that he seemed to slur his words for a moment, but nobody at work noticed anything wrong with him, and she had not noticed a recurrence of that." Id. Petitioner also told staff he had a headache earlier. Petitioner did not tell staff that he was hit by a garage door earlier that day. It bears repeating that these records show no evidence of a cut, contusion, abrasion or bruise to the head.

Petitioner was admitted to Delnor for observation and given aspirin. Pet. Ex. 3 at 206. The nurse noticed a slight facial asymmetry, but the examining doctor did not observe it. Id. Petitioner was diagnosed with left-sided parasthesias and possible acute cerebrovascular accident. Id. at 207. A CT scan on March 28, 2011 of Petitioner's head showed "no acute intracranial abnormality." Id. at 208. Dr. Mrunal Shah noted that "**the initial CT scan did not reveal a stroke, but unable to do an MRI because patient has a spinal stimulator.**" Id. and 215 (emphasis added). A Carotid Duplex Ultrasound on March 28, 2011 revealed "no hemodynamically significant stenosis seen in either carotid artery. The right vertebral artery was never clearly visualized and may be hypoplastic or stretic in this case." Id. 210-211.

On March 29, 2011, the day after his injury, Petitioner tells Dr. Nicholas Schlageter that "yesterday morning he got up and had some type of visual abnormality. It was not blurred vision, it was not double vision. He went to work and states that at about 10 o'clock in the morning, the garage door fell 13 feet and struck him on the head. He was knocked to the ground.

He does not know if he lost consciousness, but he rapidly got up off the ground and felt okay." Id. at 212. Petitioner also told Dr. Schlageter that "at about 1:30 in the afternoon, he developed left arm numbness. He continued to work, went home at about 4 o'clock and his wife thought that his speech was slurred. He also started to have left leg numbness." Id.

At the time of Petitioner's injury, Jose Negron was on a tractor outside the garage facing away from Petitioner. He did not actually witness or see Petitioner get hit by the garage door, but he did hear it slam on the ground. When he saw Petitioner walk out of the garage, Petitioner was "full of dirt" and had dirt in his hair. Negron also remembered Petitioner was complaining of a headache. Negron told Petitioner to report it, but Petitioner said he wanted to see how he felt. Petitioner "took it easy" most of the day and Negron did all of the work. Negron did not see any evidence of a head injury, nor did he notice Petitioner slurring his speech throughout the day. Negron worked with Petitioner for three years.

Oak Brook Yard Technician Dan Scandiff also testified. His responsibilities include managing the team section needs, including indirectly supervising the Highway Maintainers. Scandiff saw Petitioner early in the morning, around 6:30 or 7:30 a.m. on March 28, 2011. Petitioner did not tell Scandiff of his injury that day. Scandiff was present at the Yard until 3 p.m. that day, except for when he left to go to lunch at 11:20 a.m. Scandiff was notified of Petitioner's injury at 7 p.m. on March 28, 2011 via a phone call from Lead Worker Charles Miller. Scandiff was unaware of any issues with the garage door prior to Petitioner's accident. On March 29, 2011, Scandiff had repair work done on the garage door.

Since the accident, Petitioner has been promoted to Temporary Vacated Acting Lead Worker, a supervisory position of authority over that of a Highway Maintainer. At the time of his injury, he had worked for IDOT for only 10 months.

II. Conclusions of Law

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner failed to prove that his current condition of ill being is related to his injury on March 28, 2011. Petitioner's medical records are inconclusive as to whether or not Petitioner suffered a stroke the morning of March 28, 2011 prior to going to work. Pet. Ex. 3 at 215. Petitioner described to Delnor staff in detail the visual abnormalities he was having prior to going to work that day, which were idiopathic.

At the hearing, Petitioner tried to paint a picture that he was coerced by the numerous doctors asking about his medical condition and that in order to satisfy them, he exaggerated his visual symptoms earlier that morning, which makes no logical sense. As a result, this testimony was not credible. If Petitioner had been attempting to satisfy doctors and make up a story, he simply would have fabricated a better story. Instead it is clear to this Arbitrator that Petitioner was having visual problems in the morning before he reported for work.

Further, Petitioner did not provide an expert opinion relating to causation. For this reason, as well as those stated, above, this Arbitrator finds that Petitioner has failed to meet his burden of proving that his current condition of ill-being is causally related to his injury.

G. What were Petitioner's earnings?

IDOT's Computation Sheet reveals that Petitioner's total salary for the one year preceding the accident was $49,722.00. The same document also shows that Petitioner's AWW was $956.19. Resp. Ex. 2.

K. What amount of compensation is due for TTD?

Petitioner was paid full wages for five days, March 29, 2011, March 30, 2011, March 31, 2011, April 1, 2011 and April 4, 2011 as part of the Collective Bargaining Agreement between

his union and IDOT. Petitioner was paid TTD from March 5, 2011 through April 17, 2011. TTD was properly terminated at this point because Petitioner returned to work on April 18, 2011. Therefore, this Arbitrator makes no further award of TTD to Petitioner.

L. What is the nature and extent of the injury?

At trial, Petitioner's testimony was inconsistent. He stated he still gets headaches and has numbness on his left side, but he also testified that his symptoms resolved beginning in November 2011. Petitioner did not prove any ongoing symptoms as a result of his accident. Nor was there any objective medical evidence to suggest an injury to the body's physical structure, such as cut, contusion, abrasion or bruise. Therefore, this Arbitrator makes no award to Petitioner for the nature and extent of his injury.

M. Should penalties or fees be imposed upon Respondent?

Based on the evidence presented, the Arbitrator finds that penalties and fees against Respondent are unwarranted. Respondent has a legitimate and reasonable defense in this matter. IDOT was never presented with any documentation that Petitioner sustained a compensable injury as a result of the accident. Therefore, IDOT acted reasonably in denying benefits. Based on how Petitioner presented to Delnor, the staff attempted to determine whether or not Petitioner had a stroke. Further, Petitioner's symptoms as he described to Delnor are consistent with a person who suffered a stroke; the staff gave him aspirin the day he was presented. Petitioner's CT scan the day of the accident was negative for trauma. Finally, there is no medical evidence to suggest that Petitioner suffered a traumatic blow to his head. For these reasons, this Arbitrator does not impose penalties or fees upon Respondent.

III. Conclusion

Therefore, based on the evidence present at trial, including Petitioner's testimony as well as both parties' exhibits, the undersigned Arbitrator hereby finds that Petitioner's medical records are inconclusive as to whether or not Petitioner suffered a stroke on the day of his accident, though it is clear that he suffered some visual problems prior to going to work. This arbitrator finds that Petitioner did suffer a compensable accident, but has not proven that he has a compensable injury. Accordingly, Respondent is not liable for any further TTD. Additionally, penalties and fees should not be imposed upon Respondent.

ARBITRATOR KURT CARLSON

05-08-13
DATE

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stacy McKenna,
Petitioner,
vs.

14IWCC0136

NO: 08 WC 03412

Domino's Pizza Distribution,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, permanent partial disability, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 2 6 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB:bjg
0-2/11/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0136

McKENNA, STACY
Employee/Petitioner

Case# 08WC003412
08WC003411

DOMINO'S PIZZA DISTRIBUTION
Employer/Respondent

On 3/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1471 KARNO, MARK L & ASSOC
GINA KOSCAL
33 N LASALLE ST SUITE 2600
CHICAGO, IL 60608

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
DOUGLAS S STEFFENSON
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

14IWCC0136

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Stacy McKenna,
Employee/Petitioner

v.

Domino's Pizza Distribution,
Employer/Respondent

Case # **08** WC **3412**

Consolidated cases: **08 WC 3411**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Wheaton**, on **11/14/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

Stacy McKenna v. Domino's Pizza Distribution, 08 WC 3412

FINDINGS

On **9/12/06**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$24,950.64**; the average weekly wage was **$479.82**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **no** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment on September 12, 2006 and failed to prove that her current condition of ill-being with respect to her cervical spine is causally related to said alleged accident. Accordingly, Petitioner claim is hereby denied.

No benefits are awarded.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

2/28/13
Date

ICArbDec p. 2

MAR 1 - 2013

STATEMENT OF FACTS:

Petitioner, a 31 year old production team worker, testified that her job involved removing balls of dough from an assembly line and placing them onto trays. A video job analysis for the position in question was submitted into evidence as part of Dr. Tulipan's evidence deposition. (RX1, "Petitioner's Ex.#1"). The Arbitrator has viewed this video (actually a DVD), which depicts several workers picking up and weighing balls of dough at about chest and/or shoulder level and placing the dough on trays at waist level. The Arbitrator notes that the conveyor belts on which the dough is first removed and then placed are moving at a fairly rapid pace. Petitioner testified that she had seen the video in question and that it was filmed at a facility in Missouri, given that the site Petitioner worked at had been shut down. Petitioner claimed that the line she worked on ran twice as fast as the one shown in the video and that the workers in the video were not pressing down on the dough as hard as she had to in order to make sure the dough stuck to the tray. Petitioner testified that she worked 4 days a week, 10 hours a day and she was supposed to be rotated every 2 hours and allowed 15 minute breaks between shifts. However, she noted that she could work up to 17 hours if there was a breakdown. She testified that there were other jobs in the rotation, but she was mainly kept on the production line because she was good at it. Other duties included moving and stacking dirty trays, and replacing the dirty trays with clean trays.

Petitioner noted that she began working for Respondent on August 22, 2005, and that prior to working for Respondent she managed a Quick Lube store for five years. Petitioner testified that she started noticing pain, numbness and tingling in her hands, as well as neck pain, during the year leading up to the date of the alleged injury.

Petitioner testified that by September 6, 2006 (the alleged date of accident in claim 08 WC 3411) she was experiencing major burning, numbness and tingling in her hands. Petitioner visited Dr. Kalpesh Patel on September 12, 2006 (the alleged date of accident in claim 08 WC 3412) at which time he noted that Ms. McKenna presented on that date with complaints of neck discomfort. (PX3). Dr. Patel noted that "[t]he character of the pain is aching, moderate and sharp. The pain began 8 years ago. The pain is better with rest. The pain is located in the subscapular area and to the sides of the neck. Neck pain started after a MVA. Patient indicates ambulation worsens condition. Patient had mva 8 years ago which is when pain started. However, for past one year she has been working in a production job where she places dough balls with both hands. Denies one hand working more than other at work … Associated signs and symptoms include aching and altered sleep pattern. Factors that aggravate neck pain: turning neck to the left and right." (PX3). Dr. Patel's impression was neck sprain, spasm, noting no neurological abnormalities, and recommending conservative care, including physical therapy, as well as Naprosyn, Norco and Flexeril for two weeks. (PX3).

Petitioner testified that when she first saw Dr. Patel her neck was the focus but then her hands became a priority thereafter. In an office note dated September 26, 2006, Dr. Patel recorded that in addition to her neck complaints Petitioner now presented with increased right hand and right arm numbness. (PX3). Dr. Patel recommended continued physical therapy for the neck, which was reportedly improving, as well as an additional three weeks of Naprosyn, Norco and Flexeril. (PX3). Dr. Patel also instructed Petitioner to use wrist splints at night. (PX3).

Petitioner testified that she subsequently went to HealthWorks on October 5, 2006 where she was seen by Dr. James T. John. (PX2). She indicated that she described her symptoms at that time, noting that her problems were more severe in her right hand. Dr. John's office note on that date related complaints of increasing numbness in the right hand over the past week, primarily in the third and fourth fingers, and that the symptoms were worse at night, often keeping her from sleeping. (PX2). Dr. John's assessment was right wrist strain and paraesthesia of the right hand. (PX2). He prescribed a cock-up type wrist splint to be worn at work and while

sleeping as well as Naproxen tablets. (PX2). Dr. John also indicated that Petitioner could return to work using the splint but that she was to avoid repetitive activities of the right wrist as well as heavy gripping with the right hand. (PX2).

Petitioner was next seen at HealthWorks on October 11, 2006 at which time it was noted that "... she feels about 75% better. She is quite happy with her rate of progress and now states that she is able to sleep without difficulty." (PX2). Petitioner returned for a final visit at HealthWorks on October 18, 2006 at which time it was noted that "... she feels 100% better. No longer any paraesthesia or numbness. She is happy with the improvement and now states that she is able to sleep without any difficulty. She does feel that she would now be able to do her regular work." (PX2). Petitioner denied that she related that she was 100% better at that time, but did acknowledge that the splint helped. Petitioner was released to return to work without restrictions at that time, discharged from the clinic and instructed to continue to wear the splint while sleeping. (PX2).

Petitioner was discharged from ATI Physical Therapy on October 23, 2006 at which time it was noted that "Stacy called and notified office staff week of 10/10 that she was cancelling all remaining visits due to worsening of wrist condition which she is addressing with occupational health MD at her work." (PX3).

Petitioner eventually visited Dr. Rodrigo M. Ubilluz on November 18, 2006 at which time he related that "[t]he patient is a 31 y/o, left handed, known to me more than 10 years ago. She is now having severe numbness in the right hand and also the left hand, or more intensity on the right. She has been using a splint in the right hand. She does have neck pain, but she does not know, if this is related with her hands numbness. Weeks ago for a month she has been having pain in her neck and upper thoracic spine. This has been relieved, but she is still with some soreness. She does a lot of repetitive movements with her hands and arms, in a constant fashion. No history of injuries in her neck. I saw her in the past because of a MVA. She had at that point an injury to her lip." (PX4). Dr. Ubilluz's differential diagnosis at that time was cervical radiculopathy versus spinal stenosis and CTS bilaterally. (PX4).

Petitioner subsequently underwent an EMG on November 28, 2006 which revealed evidence of bilateral carpal tunnel syndrome. (PX5). An earlier MRI of the cervical spine, performed on November 21, 2006, was interpreted as revealing a herniated disc at C6-C7 on the left as well as mild foraminal stenosis at C5-C6 on the right. (PX4). Petitioner was thereupon referred to Dr. Suresh Velacapudi at Castle Orthopaedics.

Petitioner visited Dr. Velacapudi on January 17, 2007 complaining of pain and tingling in both hands. (PX5). Dr. Velacapudi noted evidence of a C6-7 disc herniation as well as cervical radiculopathy. Dr. Velacapudi performed an injection to Petitioner's right wrist on January 19, 2007, in addition to a nerve block on March 27, 2007, with no relief. (PX5).

In an office note dated March 27, 2007, Dr. Ubilluz indicated that the Fetanyl patches he gave Petitioner, which were supposed to last a month, only lasted two days, and that "[t]his patient clearly shows a drug seeking behavior." (PX4). Dr. Ubilluz noted that Petitioner had been referred to a pain management specialist, Dr. Durrani, to deal with her medication issue. (PX4). When questioned about these Fentanyl patches, Petitioner indicated that she was working in a cooler at the time and was all bundled up, and that the patches were not sticking and were depleting too fast. She also claimed that the reference in the doctor's notes to using a month's worth of patches in two days must have been a "typo" and that the doctor did not want to listen to her.

Petitioner subsequently sought and received treatment at Multispecialty Medical Center (MSMC) from March 29, 2007 through July 17, 2008, including trigger point injections, physical therapy, neck extensions and hand exercises. A report by Dr. Zia Durrani on March 29, 2007 noted that Petitioner "... claims that about 10 years

ago she had some motor vehicle accident [and] because of that she started having some problem in the hand and pain in the back off and on. However, in the last six months the pain in her hand has gotten worse..." (PX7).

In a note dated February 8, 2008, Dr. Jordan Trafimow at MSMC recorded that "[t]he patient has had difficulty for approximately 16 months. She was apparently involved in an auto accident. Later on she was working at a job, which required a good deal of motion of her right arm and she thinks that overuse of the arm contributed to her difficulties. Apparently, she has had two diagnosis [sic] made in the past, one is herniated disc. The only documentation I have seen on this is the MRI report. However, she says that the pain is very largely gone, she has only an occasional difficulty on the left side of her neck." (PX7). Dr. Trafimow went on to state that "[t]he real problem is on the right side where she has been diagnosed with carpal tunnel syndrome... The patient has still enough pain that she want[s] surgery and I agree that that surgery is a good idea. The patient wanted to be referred to Dr. Bartucci to have the surgery done and I gave her prescription to this effect." (PX7).

Petitioner eventually sought treatment with Dr. Eugene J. Bartucci at Elmhurst Orthopaedics on February 19, 2008. At that time, she noted that she was experiencing burning, tingling and numbness in her arms. Dr. Bartucci recorded that Petitioner "... has had trouble with her hand since 2006. Right hand worse than her left hand. The left hand is getting better. She has worked in the same job since then and has had restrictions for the last year which have helped her cope with the problem. The bracing for 7 months has also helped. She is on medication." (PX8). Dr. Bartucci noted that the previous EMG in November of 2006 revealed bilateral carpel tunnel syndrome as well as left cervical radiculopathy, and that a cervical MRI performed in November 2006 showed a left sided C5-7 disc herniation. (PX8). Dr. Bartucci recommended a right carpal tunnel release, noting that "[t]he left hand is ok for now. It is likely that her symptoms are due to overuse syndrome from her work." (PX8).

Dr. Bartucci performed a right carpal tunnel release at Elmhurst Memorial Hospital on February 28, 2008. Petitioner indicated that the surgery went well, although she did suffer a superficial infection and was prescribed antibiotics as a result.

Petitioner followed up with Dr. Bartucci on March 24, 2008. On that date Dr. Bartucci noted that Petitioner had been involved in a motor vehicle accident on March 20, 2008 and that she as a result she suffered "... a hyperextension injury to her neck and both hands, wrists impacted into the steering column." (PX8). Dr. Bartucci provided Petitioner with a splint and noted that Ms. McKenna was to check with Dr. Koutsky for her neck problems. (PX8).

With respect to this car accident, Petitioner testified that she was rear-ended while she was driving, injuring her hands as a result, and that the incident "really set off [her] left hand." She indicated that she visited Dr. Bartucci right after the accident due to the fact that she was experiencing a lot of pain, presumably in both hands. She also agreed that she had been involved in a previous MVA in 1997 as well as one on July 23, 2007. In addition, Petitioner agreed that she had been involved in a few more car accidents since the one in March of 2008.

In a note dated April 2, 2008 Dr. Bartucci indicated that Petitioner's right wrist was getting better, that her strength was good but that she was still very sore and tender in the region of the scar and the hypothenar eminence, for which he prescribed physical therapy. (PX8). Dr. Bartucci also noted that "[h]er left hand is bothering her. That was injured in a car accident on March 20, 2008." (PX8).

In a note dated April 8, 2008 Dr. Bartucci indicated that Petitioner had undergone an EMG which revealed severe carpal tunnel on the left side. (PX8). Dr. Bartucci went on to state that "[s]he was having some mild symptoms before, but they has [sic] gotten much worse since her motor vehicle accident on March 20 and now

she has a severe carpal tunnel on EMG." (PX8). Dr. Bartucci recommended surgery on the left wrist, but noted that Petitioner was still recovering from the right CTS release. (PX8).

Dr. Bartucci eventually performed a left carpal tunnel release on May 22, 2008. (PX8). Once again Petitioner experienced a superficial infection of the wound following surgery. Petitioner testified that she underwent physical therapy on the left hand thereafter, including massage, light weights and exercise. She also noted that she was taking pain medication for her neck during this time and received three epidural steroid injections in August of 2008.

Petitioner testified that she was off work following the initial surgery on February 28, 2008 and that she received short term disability benefits until her release to return to work by Dr. Bartucci on September 5, 2008. She indicated that she did not return to work for Respondent at that time, having been told that her position had been filled. Petitioner is presently not working.

Dr. Bartucci testified by way of evidence deposition on December 7, 2011. (PX12). Dr. Bartucci was asked to review the previously mentioned video job analysis. (PX12, p.18). Following his review of the video job analysis, Dr. Bartucci opined that if the activity shown was done over a period of time -- namely, a few hours a day for at least several months -- it could result in carpal tunnel syndrome. (PX12, pp.18-19). On cross examination, Dr. Bartucci agreed that as part of his analysis along these lines he did not attempt to ascertain the amount of wrist flexion required to move a dough ball from an upper conveyor to a lower dough tray or the weight of the dough balls involved in the process. (PX12, pp.24-25). In addition, Dr. Bartucci conceded that he had no idea as to the frequency of the repetitive activity in question, the amount of flexion that was required or the amount of force that was needed to perform this activity. (PX12, pp.25-26). Dr. Bartucci was also of the opinion that Petitioner would have needed a carpal tunnel release on the left side even if she had not been involved in a motor vehicle accident in March of 2008 given the positive EMG prior to that date. (PX12, p.21). However, on cross examination, Dr. Bartucci conceded that one of the reasons for the new EMG following the MVA was the involvement of Petitioner's wrist in said car mishap. (PX12, p.29). Finally, Dr. Bartucci noted that he did not place any restrictions on Petitioner at the time of his release in September of 2008, and that he did not restrict Petitioner from returning to her previous position at that time. (PX12, p.29).

At the request of Respondent, board certified orthopedic hand surgeon Dr. David J. Tulipan conducted a record review in this case. Dr. Tulipan testified by way of evidence deposition on June 27, 2012. (RX1). Dr. Tulipan was also able to view the aforementioned video/DVD. (RX1, p.20). Based on this information, Dr. Tulipan noted that "[i]t would seem that this would be a very low force-type job since they're light dough balls (weighing .67 pounds for a small one to 1.19 pounds for a large one) and they don't require any axial pressure on the palm." (RX1, p.21). More to the point, after watching the video, Dr. Tulipan noted that "... there was no vibratory activity, no repetitive wrist flexion/extension, no prolonged positions of wrist flexion or extension, and no axial pressure on the palm." (RX1, p.25). As a consequence, Dr. Tulipan was of the opinion that Petitioner's carpal tunnel syndrome was not related to her work for Respondent; he also did not feel that there was enough repetitive wrist flexion/extension to be a contributory factor in this case. (RX1, pp.24, 27).

Currently, Petitioner noted that she was still using a brace about a month prior to trial and that she still has pain in her wrist. However, she characterized this pain as "rare" and usually brought on by something she does. She also stated that she cannot seem to get help with respect to her neck, and that she is still under active treatment for same.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner alleges she suffered an injury to her cervical spine as a result of her work as a production team member working on a conveyor line placing dough balls on trays for further processing. Petitioner appears to claim that she later realized how she was holding her head to the left while placing the dough on the trays.

Petitioner visited Dr. Patel on September 12, 2006 (the alleged date of accident in claim 08 WC 3412) at which time he noted that Ms. McKenna presented on that date with complaints of neck discomfort. (PX3). Dr. Patel noted that "[t]he character of the pain is aching, moderate and sharp. The pain began 8 years ago. The pain is better with rest. The pain is located in the subscapular area and to the sides of the neck. Neck pain started after a MVA. Patient indicates ambulation worsens condition. Patient had mva 8 years ago which is when pain started. However, for past one year she has been working in a production job where she places dough balls with both hands. Denies one hand working more than other at work … Associated signs and symptoms include aching and altered sleep pattern. Factors that aggravate neck pain: turning neck to the left and right." (PX3). Dr. Patel's impression was neck sprain, spasm, noting no neurological abnormalities, and recommending conservative care, including physical therapy, as well as Naprosyn, Norco and Flexeril for two weeks. (PX3).

Petitioner testified that when she first saw Dr. Patel her neck was the focus but then her hands became a priority thereafter. In an office note dated September 26, 2006, Dr. Patel recorded that in addition to her neck complaints Petitioner now presented with increased right hand and right arm numbness. (PX3). Dr. Patel recommended continued physical therapy for the neck, which was reportedly improving, as well as an additional three weeks of Naprosyn, Norco and Flexeril. (PX3).

Petitioner was next seen at HealthWorks on October 11, 2006 at which time it was noted that "… she feels about 75% better. She is quite happy with her rate of progress and now states that she is able to sleep without difficulty." (PX2). Petitioner returned for a final visit at HealthWorks on October 18, 2006 at which time it was noted that "… she feels 100% better. No longer any paraesthesia or numbness. She is happy with the improvement and now states that she is able to sleep without any difficulty. She does feel that she would now be able to do her regular work." (PX2). Petitioner denied that she related that she was 100% better at that time, but did acknowledge that the splint helped. Petitioner was released to return to work without restrictions at that time, discharged from the clinic and instructed to continue to wear the splint while sleeping. (PX2).

Petitioner was discharged from ATI Physical Therapy on October 23, 2006 at which time it was noted that "Stacy called and notified office staff week of 10/10 that she was cancelling all remaining visits due to worsening of wrist condition which she is addressing with occupational health MD at her work." (PX3).

Petitioner eventually visited Dr. Rodrigo M. Ubilluz on November 18, 2006 at which time he related that "[t]he patient is a 31 y/o, left handed, known to me more than 10 years ago. She is now having severe numbness in the right hand and also the left hand, or more intensity on the right. She has been using a splint in the right hand. She does have neck pain, but she does not know, if this is related with her hands numbness. Weeks ago for a month she has been having pain in her neck and upper thoracic spine. This has been relieved, but she is still with some soreness. She does a lot of repetitive movements with her hands and arms, in a constant fashion. *No history of injuries in her neck.* I saw her in the past because of a MVA. She had at that point an injury to her lip." (Emphasis added). (PX4). Dr. Ubilluz's differential diagnosis at that time was cervical radiculopathy versus spinal stenosis and CTS bilaterally. (PX4).

A cervical MRI performed on November 21, 2006 was interpreted as revealing a herniated disc at C6-C7 on the left as well as mild foraminal stenosis at C5-C6 on the right. (PX4).

In an office note dated March 27, 2007, Dr. Ubilluz indicated that the Fetanyl patches he gave Petitioner, which were supposed to last a month, only lasted two days, and that "[t]his patient clearly shows a drug seeking behavior." (PX4). Dr. Ubilluz noted that Petitioner had been referred to a pain management specialist, Dr. Durrani, to deal with her medication issue. (PX4). When questioned about these Fentanyl patches, Petitioner indicated that she was working in a cooler at the time and was all bundled up, and that the patches were not sticking and were depleting too fast. She also claimed that the reference in the doctor's notes to using a month's worth of patches in two days must have been a "typo" and that the doctor did not want to listen to her.

Petitioner subsequently sought and received treatment at Multispecialty Medical Center (MSMC) from March 29, 2007 through July 17, 2008, including trigger point injections, physical therapy, neck extensions and hand exercises. A report by Dr. Zia Durrani on March 29, 2007 noted that Petitioner "... claims that about 10 years ago she had some motor vehicle accident [and] because of that she started having some problem in the hand and pain in the back off and on. However, in the last six months the pain in her hand has gotten worse..." (PX7).

In a note dated February 8, 2008, Dr. Jordan Trafimow at MSMC recorded that "[t]he patient has had difficulty for approximately 16 months. She was apparently involved in an auto accident. Later on she was working at a job, which required a good deal of motion of her right arm and she thinks that overuse of the arm contributed to her difficulties. *Apparently, she has had two diagnosis [sic] made in the past, one is herniated disc. The only documentation I have seen on this is the MRI report. However, she says that the pain is very largely gone, she has only an occasional difficulty on the left side of her neck.*" (Emphasis added). (PX7). Dr. Trafimow went on to state that "[t]he real problem is on the right side where she has been diagnosed with carpal tunnel syndrome... The patient has still enough pain that she want[s] surgery and I agree that that surgery is a good idea. The patient wanted to be referred to Dr. Bartucci to have the surgery done and I gave her prescription to this effect." (PX7).

Dr. Bartucci thereupon treated Petitioner for her bilateral carpal tunnel syndrome, the subject of claim 08 WC 3411.

The Arbitrator reviewed the video job analysis submitted into evidence as part of Dr. Tulipan's evidence deposition. (RX1, "Petitioner's Ex.#1"). As previously noted, the Arbitrator noted several workers picking up and weighing balls of dough at about chest and/or shoulder level and placing the dough on trays at waist level, an activity that required the frequent and repetitive use of the hands and wrists. However, the Arbitrator noticed no similar frequent and repetitive turning of the head by the workers in the video, given that the dough they were handling was located directly in front of them.

More importantly, other than the claim that she would hold her head to the left while placing the dough, Petitioner provided no testimony as to the specific body mechanics relative to her neck, the frequency or even the duration of such an activity so as to reasonably conclude that her job was the cause of, or even an aggravating factor in her current cervical spine condition. Furthermore, the evidence shows that Petitioner has been involved in multiple motor vehicle accidents over the years, most if not all of which would seem to be a more likely factor in her current condition of ill-being relative to her neck.

Accordingly, the Arbitrator finds that Petitioner failed to prove by the preponderance of the evidence that she sustained accidental injuries arising out of and in the course of her employment on September 12, 2006. Accordingly, her claim for compensation is hereby denied.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the above, and the Arbitrator's determination as to accident (issue "C", supra), and in light of the dearth of any fully fleshed out medical opinion in support of her claim in this regard, the Arbitrator finds that Petitioner failed to prove by the preponderance of the evidence that her current condition of ill-being with respect to her cervical spine condition is causally related to the alleged accident on September 12, 2006. Accordingly, her claim for compensation is hereby denied.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

In light of the Arbitrator's determination as to accident and causation (issues "C" and "F", supra), the Arbitrator finds that Petitioner failed to prove her entitlement to any permanent disability award. Accordingly, her claim for same is hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWCC0137

Stacy McKenna,
Petitioner,
vs.

NO: 08WC03411

Domino's Pizza Distributors,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal conncection, temporary total disability, permanent partial disability, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 2 6 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB:bjg
0-2/11/2014
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0137

McKENNA, STACY
Employee/Petitioner

Case# 08WC003411

08WC003412

DOMINO'S PIZZA DISTRIBUTION
Employer/Respondent

On 3/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1471 KARNO, MARK L & ASSOC
GINA KOSCAL
33 N LASALLE ST SUITE 2600
CHICAGO, IL 60602

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
DOUGLAS S STEFFENSON
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

14IWCC0137

STATE OF ILLINOIS)
)SS.
COUNTY OF DUPAGE)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Stacy McKenna,
Employee/Petitioner

v.

Domino's Pizza Distribution,
Employer/Respondent

Case # **08** WC **3411**

Consolidated cases: **08 WC 3412**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Wheaton**, on **11/14/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **9/6/06**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being relative to her right hand/wrist ***is*** causally related to the accident, but that her current condition of ill-being relative to her left hand/wrist ***is not*** causally related to said accident.

In the year preceding the injury, Petitioner earned **$24,950.64**; the average weekly wage was **$479.82**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **no** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$8,138.91** in non-occupational indemnity disability benefits, for a total credit of **$8,138.91**. (Arb.Ex.#1).

Respondent is entitled to a credit of **$513.35** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $319.88 per week for 12 weeks, commencing 2/28/08 through 5/21/08, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 9/7/06 through 11/14/12, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for those expenses incurred up through May 21, 2008, as provided in Sections 8(a) and 8.2 of the Act. (Arb.Ex.#3).

Respondent shall be given a credit of $513.35 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. (Arb.Ex.#1).

Respondent shall pay Petitioner permanent partial disability benefits of $287.89 week for 30.75 weeks, because the injuries sustained caused the 15% loss of use of the right hand, as provided in Section 8(e)9 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

2/28/13
Date

ICArbDec p. 2

STATEMENT OF FACTS:

Petitioner, a 31 year old production team worker, testified that her job involved removing balls of dough from an assembly line and placing them onto trays. A video job analysis for the position in question was submitted into evidence as part of Dr. Tulipan's evidence deposition. (RX1, "Petitioner's Ex.#1"). The Arbitrator has viewed this video (actually a DVD), which depicts several workers picking up and weighing balls of dough at about chest and/or shoulder level and placing the dough on trays at waist level. The Arbitrator notes that the conveyor belts on which the dough is first removed and then placed are moving at a fairly rapid pace. Petitioner testified that she had seen the video in question and that it was filmed at a facility in Missouri, given that the site Petitioner worked at had been shut down. Petitioner claimed that the line she worked on ran twice as fast as the one shown in the video and that the workers in the video were not pressing down on the dough as hard as she had to in order to make sure the dough stuck to the tray. Petitioner testified that she worked 4 days a week, 10 hours a day and she was supposed to be rotated every 2 hours and allowed 15 minute breaks between shifts. However, she noted that she could work up to 17 hours if there was a breakdown. She testified that there were other jobs in the rotation, but she was mainly kept on the production line because she was good at it. Other duties included moving and stacking dirty trays, and replacing the dirty trays with clean trays.

Petitioner noted that she began working for Respondent on August 22, 2005, and that prior to working for Respondent she managed a Quick Lube store for five years. Petitioner testified that she started noticing pain, numbness and tingling in her hands, as well as neck pain, during the year leading up to the date of the alleged injury.

Petitioner testified that by September 6, 2006 (the alleged date of accident in claim 08 WC 3411) she was experiencing major burning, numbness and tingling in her hands. Petitioner visited Dr. Kalpesh Patel on September 12, 2006 (the alleged date of accident in claim 08 WC 3412) at which time he noted that Ms. McKenna presented on that date with complaints of neck discomfort. (PX3). Dr. Patel noted that "[t]he character of the pain is aching, moderate and sharp. The pain began 8 years ago. The pain is better with rest. The pain is located in the subscapular area and to the sides of the neck. Neck pain started after a MVA. Patient indicates ambulation worsens condition. Patient had mva 8 years ago which is when pain started. However, for past one year she has been working in a production job where she places dough balls with both hands. Denies one hand working more than other at work … Associated signs and symptoms include aching and altered sleep pattern. Factors that aggravate neck pain: turning neck to the left and right." (PX3). Dr. Patel's impression was neck sprain, spasm, noting no neurological abnormalities, and recommending conservative care, including physical therapy, as well as Naprosyn, Norco and Flexeril for two weeks. (PX3).

Petitioner testified that when she first saw Dr. Patel her neck was the focus but then her hands became a priority thereafter. In an office note dated September 26, 2006, Dr. Patel recorded that in addition to her neck complaints Petitioner now presented with increased right hand and right arm numbness. (PX3). Dr. Patel recommended continued physical therapy for the neck, which was reportedly improving, as well as an additional three weeks of Naprosyn, Norco and Flexeril. (PX3). Dr. Patel also instructed Petitioner to use wrist splints at night. (PX3).

Petitioner testified that she subsequently went to HealthWorks on October 5, 2006 where she was seen by Dr. James T. John. (PX2). She indicated that she described her symptoms at that time, noting that her problems were more severe in her right hand. Dr. John's office note on that date related complaints of increasing numbness in the right hand over the past week, primarily in the third and fourth fingers, and that the symptoms were worse at night, often keeping her from sleeping. (PX2). Dr. John's assessment was right wrist strain and paraesthesia of the right hand. (PX2). He prescribed a cock-up type wrist splint to be worn at work and while

sleeping as well as Naproxen tablets. (PX2). Dr. John also indicated that Petitioner could return to work using the splint but that she was to avoid repetitive activities of the right wrist as well as heavy gripping with the right hand. (PX2).

Petitioner was next seen at HealthWorks on October 11, 2006 at which time it was noted that "... she feels about 75% better. She is quite happy with her rate of progress and now states that she is able to sleep without difficulty." (PX2). Petitioner returned for a final visit at HealthWorks on October 18, 2006 at which time it was noted that "... she feels 100% better. No longer any paraesthesia or numbness. She is happy with the improvement and now states that she is able to sleep without any difficulty. She does feel that she would now be able to do her regular work." (PX2). Petitioner denied that she related that she was 100% better at that time, but did acknowledge that the splint helped. Petitioner was released to return to work without restrictions at that time, discharged from the clinic and instructed to continue to wear the splint while sleeping. (PX2).

Petitioner was discharged from ATI Physical Therapy on October 23, 2006 at which time it was noted that "Stacy called and notified office staff week of 10/10 that she was cancelling all remaining visits due to worsening of wrist condition which she is addressing with occupational health MD at her work." (PX3).

Petitioner eventually visited Dr. Rodrigo M. Ubilluz on November 18, 2006 at which time he related that "[t]he patient is a 31 y/o, left handed, known to me more than 10 years ago. She is now having severe numbness in the right hand and also the left hand, or more intensity on the right. She has been using a splint in the right hand. She does have neck pain, but she does not know, if this is related with her hands numbness. Weeks ago for a month she has been having pain in her neck and upper thoracic spine. This has been relieved, but she is still with some soreness. She does a lot of repetitive movements with her hands and arms, in a constant fashion. No history of injuries in her neck. I saw her in the past because of a MVA. She had at that point an injury to her lip." (PX4). Dr. Ubilluz's differential diagnosis at that time was cervical radiculopathy versus spinal stenosis and CTS bilaterally. (PX4).

Petitioner subsequently underwent an EMG on November 28, 2006 which revealed evidence of bilateral carpal tunnel syndrome. (PX5). An earlier MRI of the cervical spine, performed on November 21, 2006, was interpreted as revealing a herniated disc at C6-C7 on the left as well as mild foraminal stenosis at C5-C6 on the right. (PX4). Petitioner was thereupon referred to Dr. Suresh Velacapudi at Castle Orthopaedics.

Petitioner visited Dr. Velacapudi on January 17, 2007 complaining of pain and tingling in both hands. (PX5). Dr. Velacapudi noted evidence of a C6-7 disc herniation as well as cervical radiculopathy. Dr. Velacapudi performed an injection to Petitioner's right wrist on January 19, 2007, in addition to a nerve block on March 27, 2007, with no relief. (PX5).

In an office note dated March 27, 2007, Dr. Ubilluz indicated that the Fetanyl patches he gave Petitioner, which were supposed to last a month, only lasted two days, and that "[t]his patient clearly shows a drug seeking behavior." (PX4). Dr. Ubilluz noted that Petitioner had been referred to a pain management specialist, Dr. Durrani, to deal with her medication issue. (PX4). When questioned about these Fentanyl patches, Petitioner indicated that she was working in a cooler at the time and was all bundled up, and that the patches were not sticking and were depleting too fast. She also claimed that the reference in the doctor's notes to using a month's worth of patches in two days must have been a "typo" and that the doctor did not want to listen to her.

Petitioner subsequently sought and received treatment at Multispecialty Medical Center (MSMC) from March 29, 2007 through July 17, 2008, including trigger point injections, physical therapy, neck extensions and hand exercises. A report by Dr. Zia Durrani on March 29, 2007 noted that Petitioner "... claims that about 10 years

ago she had some motor vehicle accident [and] because of that she started having some problem in the hand and pain in the back off and on. However, in the last six months the pain in her hand has gotten worse..." (PX7).

In a note dated February 8, 2008, Dr. Jordan Trafimow at MSMC recorded that "[t]he patient has had difficulty for approximately 16 months. She was apparently involved in an auto accident. Later on she was working at a job, which required a good deal of motion of her right arm and she thinks that overuse of the arm contributed to her difficulties. Apparently, she has had two diagnosis [sic] made in the past, one is herniated disc. The only documentation I have seen on this is the MRI report. However, she says that the pain is very largely gone, she has only an occasional difficulty on the left side of her neck." (PX7). Dr. Trafimow went on to state that "[t]he real problem is on the right side where she has been diagnosed with carpal tunnel syndrome... The patient has still enough pain that she want[s] surgery and I agree that that surgery is a good idea. The patient wanted to be referred to Dr. Bartucci to have the surgery done and I gave her prescription to this effect." (PX7).

Petitioner eventually sought treatment with Dr. Eugene J. Bartucci at Elmhurst Orthopaedics on February 19, 2008. At that time, she noted that she was experiencing burning, tingling and numbness in her arms. Dr. Bartucci recorded that Petitioner "... has had trouble with her hand since 2006. Right hand worse than her left hand. The left hand is getting better. She has worked in the same job since then and has had restrictions for the last year which have helped her cope with the problem. The bracing for 7 months has also helped. She is on medication." (PX8). Dr. Bartucci noted that the previous EMG in November of 2006 revealed bilateral carpel tunnel syndrome as well as left cervical radiculopathy, and that a cervical MRI performed in November 2006 showed a left sided C5-7 disc herniation. (PX8). Dr. Bartucci recommended a right carpal tunnel release, noting that "[t]he left hand is ok for now. It is likely that her symptoms are due to overuse syndrome from her work." (PX8).

Dr. Bartucci performed a right carpal tunnel release at Elmhurst Memorial Hospital on February 28, 2008. Petitioner indicated that the surgery went well, although she did suffer a superficial infection and was prescribed antibiotics as a result.

Petitioner followed up with Dr. Bartucci on March 24, 2008. On that date Dr. Bartucci noted that Petitioner had been involved in a motor vehicle accident on March 20, 2008 and that she as a result she suffered "... a *hyperextension injury to her neck and both hands, wrists impacted into the steering column*." (Emphasis added) (PX8). Dr. Bartucci provided Petitioner with a splint and noted that Ms. McKenna was to check with Dr. Koutsky for her neck problems. (PX8).

With respect to this car accident, Petitioner testified that she was rear-ended while she was driving, injuring her hands as a result, and that the incident "really set off [her] left hand." She indicated that she visited Dr. Bartucci right after the accident due to the fact that she was experiencing a lot of pain, presumably in both hands. She also agreed that she had been involved in a previous MVA in 1997 as well as one on July 23, 2007. In addition, Petitioner agreed that she had been involved in a few more car accidents since the one in March of 2008.

In a note dated April 2, 2008 Dr. Bartucci indicated that Petitioner's right wrist was getting better, that her strength was good but that she was still very sore and tender in the region of the scar and the hypothenar eminence, for which he prescribed physical therapy. (PX8). Dr. Bartucci also noted that "*[h]er left hand is bothering her. That was injured in a car accident on March 20, 2008.*" (Emphasis added) (PX8).

In a note dated April 8, 2008 Dr. Bartucci indicated that Petitioner had undergone an EMG which revealed severe carpal tunnel on the left side. (PX8). Dr. Bartucci went on to state that *"[s]he was having some mild symptoms before, but they has [sic] gotten much worse since her motor vehicle accident on March 20 and now*

she has a severe carpal tunnel on EMG." (PX8). (Emphasis added). Dr. Bartucci recommended surgery on the left wrist, but noted that Petitioner was still recovering from the right CTS release. (PX8).

Dr. Bartucci eventually performed a left carpal tunnel release on May 22, 2008. (PX8). Once again Petitioner experienced a superficial infection of the wound following surgery. Petitioner testified that she underwent physical therapy on the left hand thereafter, including massage, light weights and exercise. She also noted that she was taking pain medication for her neck during this time and received three epidural steroid injections in August of 2008.

Petitioner testified that she was off work following the initial surgery on February 28, 2008 and that she received short term disability benefits until her release to return to work by Dr. Bartucci on September 5, 2008. She indicated that she did not return to work for Respondent at that time, having been told that her position had been filled. Petitioner is presently not working.

Dr. Bartucci testified by way of evidence deposition on December 7, 2011. (PX12). Dr. Bartucci was asked to review the previously mentioned video job analysis. (PX12, p.18). Following his review of the video job analysis, Dr. Bartucci opined that if the activity shown was done over a period of time -- namely, a few hours a day for at least several months -- it could result in carpal tunnel syndrome. (PX12, pp.18-19). On cross examination, Dr. Bartucci agreed that as part of his analysis along these lines he did not attempt to ascertain the amount of wrist flexion required to move a dough ball from an upper conveyor to a lower dough tray or the weight of the dough balls involved in the process. (PX12, pp.24-25). In addition, Dr. Bartucci conceded that he had no idea as to the frequency of the repetitive activity in question, the amount of flexion that was required or the amount of force that was needed to perform this activity. (PX12, pp.25-26). Dr. Bartucci was also of the opinion that Petitioner would have needed a carpal tunnel release on the left side even if she had not been involved in a motor vehicle accident in March of 2008 given the positive EMG prior to that date. (PX12, p.21). However, on cross examination, Dr. Bartucci conceded that one of the reasons for the new EMG following the MVA was the involvement of Petitioner's wrist in said car mishap. (PX12, p.29). Finally, Dr. Bartucci noted that he did not place any restrictions on Petitioner at the time of his release in September of 2008, and that he did not restrict Petitioner from returning to her previous position at that time. (PX12, p.29).

At the request of Respondent, board certified orthopedic hand surgeon Dr. David J. Tulipan conducted a record review in this case. Dr. Tulipan testified by way of evidence deposition on June 27, 2012. (RX1). Dr. Tulipan was also able to view the aforementioned video/DVD. (RX1, p.20). Based on this information, Dr. Tulipan noted that "[i]t would seem that this would be a very low force-type job since they're light dough balls (weighing .67 pounds for a small one to 1.19 pounds for a large one) and they don't require any axial pressure on the palm." (RX1, p.21). More to the point, after watching the video, Dr. Tulipan noted that "... there was no vibratory activity, no repetitive wrist flexion/extension, no prolonged positions of wrist flexion or extension, and no axial pressure on the palm." (RX1, p.25). As a consequence, Dr. Tulipan was of the opinion that Petitioner's carpal tunnel syndrome was not related to her work for Respondent; he also did not feel that there was enough repetitive wrist flexion/extension to be a contributory factor in this case. (RX1, pp.24, 27).

Currently, Petitioner noted that she was still using a brace about a month prior to trial and that she still has pain in her wrist. However, she characterized this pain as "rare" and usually brought on by something she does. She also stated that she cannot seem to get help with respect to her neck, and that she is still under active treatment for same.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that she began working for Respondent as a production team member on August 22, 2005, and that her duties included placing dough balls onto trays from a moving conveyor belt. She noted that during the year leading up to the alleged accident she started noticing pain, numbness and tingling in her hands, as well as neck pain. Prior to working for Respondent, Petitioner managed a Quick Lube store for five years. She noted that this was not a production line job, and that she did the training, payroll, hiring/firing and scheduling for the store.

Petitioner testified that she worked 4 days a week, 10 hours a day and she was supposed to be rotated every 2 hours and allowed 15 minute breaks between shifts. However, she noted that she could work up to 17 hours if there was a breakdown. She testified that there were other jobs in the rotation, but she was mainly kept on the production line because she was good at it. Other duties included moving and stacking dirty trays, and replacing the dirty trays with clean trays.

The Arbitrator reviewed the video/DVD which depicts several workers picking up and weighing balls of dough at about chest and/or shoulder level and placing the dough on trays at waist level. (RX1, "Petitioner Ex.#1"). The Arbitrator notes that the conveyor belts on which the dough is first removed and then placed are moving at a fairly rapid pace. Petitioner testified that she had seen the video in question and that it was filmed at a facility in Missouri, given that the site Petitioner worked at had been shut down. Petitioner claimed that the line she worked on ran twice as fast as the one shown in the video and that the workers in the video were not pressing down on the dough as hard as she had to in order to make sure the dough stuck to the tray.

Petitioner testified that by September 6, 2006 she was experiencing major burning, numbness and tingling in her hands. This is the alleged date of accident in the present claim (08 WC 3411).

Petitioner testified that when she first saw Dr. Patel on September 12, 2006 the focus was in regard to her neck, but that her hands then became a priority. Along these lines, Dr. Patel's office note dated September 26, 2006 recorded that in addition to her neck complaints Petitioner now presented with increased right hand and right arm numbness. (PX3).

The medical records show that Petitioner has a history of motor vehicle accidents. Indeed, it appears that Petitioner had previously treated for neck and hand complaints following a MVA eight (8) years earlier. However, there is no indication that Petitioner was actively treating for same during the period leading up to the accident, or that she had been diagnosed with bilateral carpal tunnel at any time prior to her employment with Respondent.

Therefore, based on the above, and the record taken as a whole, including the highly repetitive activity depicted in the job analysis video, the Arbitrator finds that Petitioner sustained accidental repetitive trauma type injuries to her right and left hands/wrists arising out of and in the course of her employment, and that this injury manifested itself as of September 6, 2006.

The question then becomes whether Petitioner's her current condition of ill-being with respect to her right and left hands/wrists are causally related to the accident in question.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Treating surgeon Dr. Bartucci, after reviewing the video job analysis, opined that if the activity shown was done over a period of time -- namely, a few hours a day for at least several months -- it could result in carpal tunnel syndrome, although he did concede that he did not know the amount of wrist flexion required to move a dough ball from an upper conveyor to a lower dough tray or determine the weight of the dough balls involved in the process. (PX12, pp.18-19,24-25).

Respondent's record review, Dr. Tulipan, also having reviewed the video job analysis, noted that "[i]t would seem that this would be a very low force-type job since they're light dough balls (weighing .67 pounds for a small one to 1.19 pounds for a large one) and they don't require any axial pressure on the palm." (RX1, p.21). More to the point, after watching the video, Dr. Tulipan noted that "… there was no vibratory activity, no repetitive wrist flexion/extension, no prolonged positions of wrist flexion or extension, and no axial pressure on the palm." (RX1, p.25). As a consequence, Dr. Tulipan was of the opinion that Petitioner's carpal tunnel syndrome was not related to her work for Respondent; he also did not feel that there was enough repetitive wrist flexion/extension to be a contributory factor in this case. (RX1, pp.24, 27).

Up to this point, the Arbitrator finds Dr. Bartucci's opinion to be more persuasive – namely, that Petitioner's job, as shown in the video, was sufficiently repetitive in nature so as to find that Petitioner's bilateral carpal tunnel condition was causally related to her employment. Then, after having undergone a right carpal tunnel release, and while still receiving physical therapy for the right hand, Petitioner was involved in yet another of her multiple motor vehicle accidents, this one on March 20, 2008. It is at this point that Petitioner's condition of ill-being with respect to her left wrist appears to become more severe.

While the EMG performed on EMG on November 28, 2006 (PX5) did indeed reveal evidence of bilateral carpal tunnel syndrome, the medical records reveal that the far more serious complaints were with respect to the right hand/wrist. Indeed, in a note dated April 8, 2008 Dr. Bartucci stated that Petitioner "… *was having some mild symptoms before (the most recent MVA), but they has [sic] gotten much worse since her motor vehicle accident on March 20 and now she has a severe carpal tunnel on EMG.*" (PX8). (Emphasis added). With respect to the motor vehicle accident itself, Dr. Bartucci recorded, in an office note dated four days after the MVA, that Petitioner had suffered "… a *hyperextension injury to her neck and both hands, wrists impacted into the steering column*." (Emphasis added) (PX8). In addition, in a note dated April 2, 2008, Dr. Bartucci indicated that Petitioner's right wrist was getting better and that "[*h*]*er left hand is bothering her. That was injured in a car accident on March 20, 2008.*" (Emphasis added) (PX8). Petitioner herself even conceded the fact that the March 2008 car incident "really set off [her] left hand" and that she visited Dr. Bartucci right after the accident due to the fact that she was experiencing a lot of pain, presumably in both hands.

This suggests, at least with respect to her left hand/wrist, that the motor vehicle accident on March 20, 2008 represented more than a temporary aggravation, as with the right hand/wrist, and as such amounted to an intervening event which effectively broke the chain of causation.

And while Dr. Bartucci did offer up the opinion that Petitioner would have needed a carpal tunnel release on the left side even if she had not been involved in a motor vehicle accident in March of 2008, given the positive EMG prior to that date (PX12, p.21), the fact remains that no such surgery had been recommended up until that point and that Dr. Bartucci himself had described Ms. McKenna's symptoms before the MVA as "mild."

Accordingly, the Arbitrator finds that Petitioner failed to prove that her condition of ill-being with respect to her left hand/wrist subsequent to the motor vehicle accident on March 20, 2008 was causally related to the accident on September 6, 2006. However, the Arbitrator finds that the MVA in question resulted in a temporary aggravation of her right carpal tunnel syndrome condition, given that Petitioner was undergoing active medical treatment on the right side at the time, in the form of physical therapy following surgery, and in light of the fact that there is no evidence to suggest her condition significantly worsened following the MVA in question.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

As noted above, the Arbitrator determined that Petitioner's current condition of ill-being with respect to her right hand/wrist remains causally related to the work related accident on September, but that Petitioner suffered an intervening accident on March 20, 2008 that broke the chain of causation with respect to her left hand/wrist.

Following the MVA, Dr. Bartucci, in a note dated April 8, 2008, indicated that Petitioner had undergone an EMG which revealed severe carpal tunnel on the left side. (PX8). At that time, Dr. Bartucci recommended surgery on the left wrist, but noted that Petitioner was still recovering from the right CTS release. (PX8). Thus, it would appear that Dr. Bartucci held off on the proposed left carpal tunnel release until such time as Petitioner had finished treatment relative to her right hand/wrist.

Dr. Bartucci eventually performed a left carpal tunnel release on May 22, 2008. (PX8). The Arbitrator finds this to be the date that Petitioner's treatment with respect to her left hand/wrist ceased being causally related to her employment.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses up through May 21, 2008 pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. Respondent shall be entitled to a credit for any and all amounts paid on account of this injury.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the above, and the record taken as a whole, including the Arbitrator's determination as to causation (see issues "F" and "J", supra), the Arbitrator finds that Petitioner was temporarily totally disabled as a result of the bilateral carpal tunnel syndrome from February 28, 2008, the date of the right CTS surgery, through May 21, 2008, or the day before the left CTS surgery, for a period of 12 weeks (including the extra leap year day).

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Currently, Petitioner noted that she was still using a brace about a month prior to trial and that she still has pain in her wrist. However, she characterized this pain as "rare" and usually brought on by something she does. Dr. Bartucci, for his part, noted that he did not place any restrictions on Petitioner at the time of his release in September of 2008, and that he did not restrict Petitioner from returning to her previous position at that time. (PX12, p.29).

Based on the above, and the record taken as a whole, the Arbitrator finds that as a result of the accident on September 6, 2006 Petitioner sustained permanent partial disability to the extent of 15% of the right hand pursuant to §8(e)9 of the Act. However, in light of the Arbitrator determination to the effect that Petitioner current condition of ill-being with respect to her left hand/wrist is not causally related to the accident in question, Petitioner's claim for permanency for same is hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Casey R. Czajka,

Petitioner,

14IWCC0138

vs. NO: 12 WC 33393

CBS Messenger Service, Inc.,
d/b/a Custom Brokers Supply, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 22, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $8,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 26 2014

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

MJB:bjg
0-2/11/2014
52

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0138

CZAJKA, CASEY R
Employee/Petitioner

Case# **12WC033393**

CBS MESSENGER SERVICE
Employer/Respondent

On 4/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4988 LAW OFFICES OF DAVID W CLARK
511 W WESLEY ST
WHEATON, IL 60187

4234 RIPES NELSON BAGGOT KALOBRATSO
PERRY GENTILE
2353 HASSELL RD SUITE 115
HOFFMAN ESTATES, IL 60169

14IWCC0138

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

CASEY R. CZAJKA
Employee/Petitioner

v.

CBS MESSENGER SERVICE
Employer/Respondent

Case # 12 WC 33393

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **February 19, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other: _____

FINDINGS

On the date of accident, **02-08-2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$28,600.00**; the average weekly wage was **$550.00**.

On the date of accident, Petitioner was **35** years of age, *single* with **0** dependent children.

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$6,966.73** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$6,966.73**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $366.30/week for 42-4/7 weeks, commencing 4-27-2012 through 2-19-2013, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $6,966.73 for temporary total disability benefits that have been paid.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $111.33 to Elmhurst Orthopaedics for the August 2012 visit to Dr. Koutsky, in accordance with Section 8(a) and subject to Section 8.2 of the Act.

Respondent shall pay for the reasonable, related and necessary prospective medical care from Elmhurst Orthopaedics that includes visits to Dr. Koutsky, medication and physical therapy as provided in Section 8(a) of the Act. Such payments shall be subject to Section 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

4/21/13
Date

1CArbDec19(b)

APR 22 2013

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

ILLINOIS WORKER'S COMPENSATION COMMISSION

CASEY R. CZAJKA	)	
Employee/Petitioner	)	
v.	)	**12 WC 33393**
CBS MESSENGER SERVICE	)	
Employer/Respondent	)	

ARBITRATION DECISION 19 (b) ADDENDUM

FINDINGS OF FACT

On February 8, 2012, petitioner was employed by respondent CBS Messenger Service in the maintenance department. He had been employed by respondent for 15 years originally hired as a delivery driver. In the months before the accident, petitioner had been working indoors dividing his time between maintaining respondent's fleet of cars (15-20 cars) and office work. Petitioner testified that between 1-2 hours a day was spent in the maintenance of respondent's vehicles and the remaining 6-7 hours per day was spent in the office.

On February 8, 2012, petitioner started his shift around 5:30 am. At approximately 6 am, petitioner was changing a tire on one of the respondent's vehicles when he noticed that something "popped" in his low back. Petitioner reported the accident to his supervisor and worked the rest of the day in pain. When the pain did not improve, he was sent by his supervisor to the Alexian Brothers occupational site where X-rays were taken and a light-duty return to work was given. The doctor at Alexian Brothers prescribed pain medication and also instructed petitioner to consult an orthopaedic doctor.

Petitioner returned to light-duty work with respondent on February 10, 2012, but when his low back pain did not improve, he went to see Dr. Kevin Koutsky at Elmhurst Orthopaedics. At his first visit was on February 29, 2012, petitioner reported the mechanism of his work injury and told the doctor that he felt a sharp pain radiating into his buttocks and thighs. PX 1. Dr. Koutsky reviewed the X-rays and noted that petitioner's 2006 spinal fusion at L4/5 and L5/S1 looked solid and further noted lower back pain and bilateral buttock and thigh pain from the 2-8-2012 work accident. Physical therapy pain medications, and an MRI were prescribed. PX1. Light-duty work restrictions were continued.

On March 14, 2012, MR images of petitioner's lumbar spine were taken. The following impression was offered:

1. Post surgical changes at the L4-5 and L5-S1 level as described above.
2. Mild diffuse disc bulging at the L3-4 level with bilateral foraminal narrowing as described above.
3. No disc protrusions or herniations seen. PX1.

On the March 28th visit with Dr. Koutsky, petitioner's medications were refilled and physical therapy was continued. An electrical stimulation unit was ordered and a discussion about epidural injections also took place. PX.1.

On the April 26, 2012 visit. Dr. Koutsky noted that petitioner had been attending physical therapy with limited improvement of his symptoms and that his PT had ended a week prior to the visit. Petitioner's medications were refilled and he was to do his home exercises while using his electrical stimulation unit which did provide some improvement to his symptoms. PX 1.Petitioner was again limited to light duty at work and continued to work until the next day (April 27th) when respondent sold its interest to another company. Petitioner was then informed that his light-duty restrictions could not be accommodated and he was started on TTD as of that date. PX1

Petitioner's next visit for his back was June 29th (petitioner had broken his ankle at his house in the interim and was still presenting to the clinic for this non-work injury from May-June). On this 6-29-12 visit, Dr. Koutsky noted that the one epidural injection received by the petitioner did provide some limited but temporary relief. Dr. Koutsky continued his recommendation for home exercises and pain medications. He also continued the light-duty release. PX1

The last approved visit with Dr. Koutsky occurred on August 10, 2012 at which time Dr. Koutsky noted that petitioner was "still having a fair amount of pain in the back and leg". Dr. Koutsky discussed surgery as well as conservative treatment. Petitioner elected to pursue conservative measures that included more physical therapy, but declined another epidural injection as the first one provided limited relief. Medications were again refilled and petitioner was released to a light-duty capacity. PX 1. A follow-up visit with Dr. Koutsky was scheduled for mid-September but petitioner was never allowed to attend this visit as respondent cut petitioner off from all medical and TTD benefits based on the report from respondent's Section 12 examining physician, Dr. Julie Wehner. RX1.

Petitioner testified that he waited two hours for Dr. Wehner's five-minute physical examination.

Petitioner testified he did not have health insurance so he could not see Dr. Koutsky after his worker's compensation benefits were terminated because he could not afford the visit. Petitioner further testified that he did not look for light-duty work as he did not want to start a job with light-duty restrictions only to take time off for more medical treatments. Lastly, Petitioner testified that he would like to follow up with Dr. Koutsky and also undergo physical therapy if the arbitrator approves such medical care.

CONCLUSIONS OF LAW

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified that he was in good health until February 8, 2012. He had two prior back surgeries but six years had passed with no treatment for his back until the work accident. The Petitioner testified he was changing a tire as part of his regular job duties when he experienced a "pop" in his back. Such pop was followed by a stabbing, harsh pain in his back. This version of the accident was not disputed by respondent.

On March 19, 2012, petitioner was seen by Dr. Koutsky to review the MRI results. Dr. Koutsky opined: "The impression reads postsurgical changes at L4-5 and L5-S1, mild diffuse disc bulge at L3-4. No protrusions or herniations are noted. No abnormal enhancement." PX1.

The Arbitrator notes that the FINDINGS section of such MRI report reads: "Routine MRI of the lumbar spine was performed with and without intravenous contrast enhancement. Sagittal and axial images were obtained in various sequences." PX1.

Petitioner testified that his complaints of back pain in February 2013 are the same as those he had in August 2012.

Per the findings above, petitioner has offered the medical records of Dr. Kevin Koutsky wherein he finds: that petitioner suffered a low back injury at work on February 8, 2012; that petitioner's complaints are still present seven months post-accident; that petitioner should be at light-duty work restriction; and that petitioner needs further medical care and treatment. PX 1.

Dr. Koutsky's most recent diagnosis is "Lumbar spondylosis and stenosis, status post fusion." Please see the August 10, 2012 Progress Note in PX1.

Respondent submitted a Section 12 report by Dr. Julie Wehner that causally links petitioner's work injury to his low back complaints. "Therefore, the diagnosis of Mr. Czajka would be low back pain. The mechanism of injury would indicate a lumbar strain . . . the lumbar strain is causally related to the date of the February 8, 2012." See RX 1. Respondent did not offer any medical evidence that petitioner's current condition is due to a pre-existing medical condition nor did respondent offer any medical evidence of treatment for the low back in the five years prior to the accident.

Lastly, while Dr. Wehner opines that petitioner can return to work with "some prior work restrictions", she has failed to mention what, if any restrictions, petitioner had. Respondent has not offered any medical evidence of prior restrictions. The treating medical records in evidence are the records from Elmhurst Orthopaedics. Such records contain no mention of work restrictions before the February 2012 accident. Petitioner's testimony was that he had back surgery in 2000 and at another time, but that before February 8, 2012, his back was "fine." Petitioner's unrebutted testimony was that Dr. Julie Wehner's Section 12 exam lasted only five minutes.

In weighing the testimony and the evidence, the Arbitrator finds the medical opinions of petitioner's treating orthopaedic physician, Dr. Kevin Koutsky, to be more persuasive than those of respondent's examining orthopaedic physician, Dr. Julie Wehner. Please see International Vermiculite v. Indus. Comm'n, 77 Ill.2d 1, 394 N.E.2d 1166 (1979).

Based upon the foregoing, the Arbitrator finds that petitioner injured his back in an accident that arose out of and in the course of his employment with respondent on February 8, 2012 and that petitioner's current condition of ill-being of his back is causally related to such work accident.

J. Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner introduced Exhibit #2 which was a charge for the August 2012 visit with Dr. Koutsky with an outstanding amount of $111.33. PX 2. As this visit was before Respondent's September 2012 denial of benefits, the Arbitrator finds this bill is reasonable and necessary and should be paid by Respondent, in accordance with Section 8(a) and subject to Section 8.2 of the Act.

K. Is Petitioner entitled to any prospective medical care?

The Arbitrator has found Dr. Koutsky's opinions to be more persuasive than those of Dr. Wehner. Dr. Koutsky has recommended that petitioner receive further medical care. Please see the August 10, 2012 Progress Note. PX 1.

Dr. Wehner opined: "The radiologic findings show his preexisting surgical sites with no change. His neurologic examination is normal. He has had an adequate course of physical therapy and should be transitioned to a home exercise program."

Respondent has not conducted a utilization review, pursuant to the Act, as amended.

Therefore, the Arbitrator awards the reasonable, necessary and related prospective medical care that includes follow-up visits with Dr. Kevin Koutsky, additional physical therapy and medication.

L. What TTD benefits are in dispute?

Once respondent could not accommodate light-duty restrictions, they paid TTD benefits. The parties have stipulated that petitioner was temporarily totally disabled from April 27, 2012 through September 6, 2012 and that respondent paid $6,966.73 in TTD benefits.

Respondent's Section 12 report indicated that petitioner should return to work with restrictions although Dr. Wehner did not elaborate on what the restrictions were and seems to state - without reference to any medical records - that the work restrictions pre-dated the February 8, 2012 work accident.

Dr. Koutsky stated that the light-duty work restrictions should continue and respondent has not presented any evidence that light-duty work is available to petitioner. Petitioner testified that his condition of ill-being did not improve after the August 10, 2012 visit and continues through the date of the hearing on February 19, 2013.

The Arbitrator finds for petitioner on the issue of outstanding TTD.

Respondent shall pay Petitioner temporary total disability benefits of $366.30 a week for 42-4/7 weeks, which representing the time period from 4-27-2012 through 02-19-2013, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $6,966.73 for temporary total disability benefits that have been paid.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Leon Smith, Jr.,
Petitioner,
vs.

NO: 12WC 15569

14IWCC0139

Perry Broughton Trucking & Excavating,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, benefit/wage rate, notice, temporary total disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 8, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 2 7 2014

Charles J. DeVriendt

Stephen Mathis

Ruth W. White

o022014
CJD/jrc
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SMITH, LEON JR
Employee/Petitioner

Case# **12WC015569**

14IWCC0139

PETTY BROUGHTON TRUCKING & EXCAVATING
Employer/Respondent

On 3/8/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0149 WARREN E DANZ PC
710 NE JEFFERSON
PEORIA, IL 61603

0332 LIVINGSTONE MUELLER ET AL
KEN BIMA
620 E EDWARDS ST POB 335
SPRINGFIELD, IL 62705

14IWCC0139

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Leon Smith, Jr.
Employee/Petitioner
v.
Perry Broughton Trucking & Excavating
Employer/Respondent

Case # 12 WC 15569

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on **2/5/2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **4/12/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

On the date of accident, Petitioner was **25** years of age, ***single*** with **1** dependent child.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

ORDER

Petitioner failed to meet his burden on the issue of causation. Determination of other disputed issues is moot.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

D. D. McCarthy
Signature of Arbitrator

March 2, 2013
Date

MAR 8 - 2013

The Arbitrator finds the following facts:

Petitioner graduated high school in 2004. In 2006 he began working as a union laborer and union concrete finisher. Petitioner testified that working as a laborer and concrete finisher required repetitive physical use of his hands.

Petitioner testified that through the union he started working full time for respondent on 7/19/2011. Prior to that he worked for the respondent from 8/1/07 – 8/15/07. Petitioner first sought treatment for bilateral hand complaints in March of 2011. Petitioner testified that he was seen at an Express Care and at that time experienced a little pain and numbness in his hands. Petitioner testified that this pain would wake him up at night. Petitioner testified that he was prescribed an anti-inflammatory medication along with wrist splints. Petitioner on direct examination testified that after receiving the splints and anti-inflammatory medication the pain and numbness went away until he started working for the respondent.

Medical records from Memorial Express Care note that petitioner was seen on 3/7/2011. The history in that record states:

> "The patient presents with bilateral hand and wrist pain for over 6 months in a 24 year old male who is a concrete worker. He had not taken the time to deal with this until now. He denies an acute trauma. The pain is throbbing, worse at night and in the morning, and make it difficult to grip strongly at work."

Petitioner's physical examination revealed a positive phalens and tinnels signs. Petitioner was diagnosed with carpal tunnel syndrome and prescribed anti-inflammatory and pain medication. The petitioner was also prescribed cock-up wrist braces to be used at night. Petitioner was advised to establish with a primary care provider for follow up and possibly an orthopedic referral. (RX1).

Petitioner testified that after he was rehired by the respondent on 7/19/2011 he worked until 4/12/2012. Petitioner testified that he was hired as a concrete finisher but also worked as a laborer. During this time petitioner testified that he worked numerous jobs with the respondent including the YMCA, 5th and Cook Street, the airport, the fairgrounds, a strip mall in Sherman, and a hotel. Petitioner testified in detail as to his job requirements of a concrete finisher/laborer. This includes carrying steel forms, setting the forms, pouring the concrete, leveling the concrete, and tearing down after the job was completed. Petitioner testified to the use of numerous tools that he used in performing his job activities. Petitioner testified that his job requirements involved repetitive, physical use of his hands. (PX6, PX7).

Petitioner testified that two months into his employment with respondent the numbness and pain complaints in his hands returned. The petitioner testified that he told his supervisor, Mr. Ed Rainwater, of his hand

complaints. Petitioner testified that he was told to wait until he was laid off in the wintertime to see a doctor about it. Petitioner testified that on 4/12/2012 he reported to work and started loading steel frames into respondent's truck. Petitioner testified that as he was lifting a steel frame to the top of the truck he felt a sharp pain that he described as electricity shooting down his hands to his elbows. Petitioner testified that he dropped the form and advised his supervisor, Mr. Rainwater, that he needed to go to the doctor. Petitioner testified that he was not asked if he needed to complete an accident report. Petitioner testified that he sought treatment immediately at St. John's Express Care.

The medical records indicate that petitioner was seen at Priority Care on 4/12/2012. The history in that record states "Pain/numbness/tingling in bilateral hands for the past year at night at work. Seen at Express Care 5-6 months ago and given wrist splints. These are not helping." Due to the duration of the symptoms petitioner was referred to Dr. Edwards Trudeau for an electrodiagnostic study. There is no history of the petitioner sustaining a specific accident involving his hands on 4/12/2012. Contrary to petitioner's testimony there is no history of petitioner's bilateral hand complaints resolving after his diagnosis in March of 2011 and then reoccurring after his employment with the respondent. (RX2).

Petitioner's electrodiagnostic studies took place on 4/19/2012. The history in Dr. Trudeau's record states "The patient indicates in terms of chief complaint 'My wrists are having hand pain from my wrist to my fingers…fingers get tingly, wakes me up at night. It has been going on for over a year and I am a concrete laborer and can barely work due to pain…' " There is no history of the petitioner sustaining a specific accident involving both of his hands on 4/12/2012. Contrary to petitioner's testimony there is no history of petitioner's bilateral hand complaints resolving after his diagnosis in March of 2011 and then reoccurring after his employment with the respondent. (RX2). The electrodiagnostic study was interpreted as demonstrating bilateral carpal tunnel syndrome moderately severe on either side with the right being greater than the left. (PX3).

Petitioner returned to Priority Care and was seen on 4/30/2012. Based on the results of the electrodiagnostic study he was referred for an orthopedic consult. Petitioner was seen by surgeon, Dr. Christopher Maender, on 5/16/2012. The history in Dr. Maender's record states "This is a 26-year-old gentlemen kindly sent over by a physician assistant Kelly for evaluation of his bilateral hand numbness and tingling. He is right hand dominant. He states that he has had this numbness and tingling for greater than 8 months. He has been progressively getting worse, that bothers him significantly. It does wake him up at night…He has been doing construction work for quite a while with concrete finishing. He swings sledge hammers on a regular basis…He has tried a steroid taper, which only helped minimally. He has tried Naproxen, which does not really help. He has tried some wrist braces for the past 8 months with minimal help." There is no history of the petitioner sustaining a specific accident involving both of his hands on 4/12/2012. Contrary to petitioner's testimony there is no history

of petitioner's bilateral hand complaints resolving after his diagnosis in March of 2011 and then reoccurring after his employment with the respondent. (RX2).

Dr. Maender recommended bilateral carpal tunnel releases. On that date Dr. Maender restricted the claimant from "vibrational tools." (PX2). Dr. Maender proceeded with a right carpal tunnel release on 8/6/2012 followed by a left carpal tunnel release on 8/20/2012. Subsequently Dr. Maender allowed petitioner to return to full duty work starting on 10/25/2012. Dr. Maender last saw petitioner on 1/22/2013. On that date Dr. Maender noted that the claimant was "doing well" and released petitioner from his care. (PX2).

Petitioner testified that he has not returned to work. Petitioner testified that his hands are a lot better and he does not experience numbness, tingling, or pain. Petitioner testified that he experiences pain when performing pushups. Petitioner testified that he has been afraid to attempt work activities. Petitioner testified that he did go hunting in late October or November of 2012 with a compound bow.

Mr. Michael Emmons testified on behalf of petitioner. Mr. Emmons is a laborer/concrete finisher. He has worked off and on for the past 2 ½ years with the respondent. Mr. Emmons was working for the respondent when petitioner was. Mr. Emmons testified that the work for respondent was physically demanding on his hands and repetitive. Mr. Emmons testified that he could not recall a specific time when petitioner complained of hand pain. Mr. Emmons was working on 4/12/2012. Mr. Emmons testified that he was on top of the truck and couldn't see but guessed that petitioner dropped the form. Petitioner complained of hand pain and hurting his back.

Mr. Edward Rainwater testified on behalf of the respondent. Mr. Rainwater has worked for the respondent for 10 years. He works as a concrete working foreman. Mr. Rainwater usually worked with petitioner on a daily basis. Mr. Rainwater testified that within the first two weeks of petitioner's employment he started complaining of problems with his hands. Mr. Rainwater testified that he was working on 4/12/2012. Mr. Rainwater testified that he believes petitioner arrived at the respondent's at either 6:30 or 6:45 a.m. They then went to a different location to load steel forms. At around 7:15 a.m. while loading forms petitioner advised Mr. Rainwater that his hand was hurting. Based on respondent's procedures Mr. Rainwater asked petitioner if he wanted to complete an accident report and go to the doctor. Petitioner did not want to complete an accident report. Mr. Rainwater testified that petitioner indicated that he had problems with his hands prior. Mr. Rainwater testified that at no time did petitioner indicate that he got hurt on the job or that his hand problem was a result of his work for the respondent. Mr. Rainwater testified that he keeps a daily log. The 4/12/2012 entry noted that petitioner left to get his hand checked and that "It did not happen on job." Mr. Rainwater testified that after the incident he

reported to his supervisor that petitioner said he hurt his hand and he was going to the doctor but it did not happen on the job.

Mr. Jim Butler testified on behalf of the respondent. Mr. Butler has worked for the respondent for the past 30 years. He works as a supervisor. His job duties consist of coordinating the work and dealing directly with the foreman. Mr. Butler testified that he was on the job site on 4/12/2012 where petitioner was working. Mr. Butler testified that he had a conversation with Mr. Ed Rainwater concerning the petitioner. Mr. Butler testified that he documented that conversation in a daily work log for that date. Mr. Butler testified that log states "Leon went home, had a swollen hand when he showed up – showed up for work. Said not work related, did not happen on the job. Asked about an accident report, he said no, pre-existing injury."

At petitioner's request Dr. Christopher Maender testified via an evidence deposition on 10/2/2012. Dr. Maender has been board certified since 2010 and specializes in the treatment of hand and upper extremity conditions. Dr. Maender testified that based on his physical examination and review of the electrodiagnostic study he felt that petitioner had bilateral carpal tunnel syndrome. Dr. Maender testified that he performed bilateral carpal tunnel releases and that he last saw petitioner on September 26, 2012. Dr. Maender testified that petitioner provided him with a history of performing construction work for quite a while mostly with concrete finishing. Dr. Maender opined that petitioner's work activities were at least a contributing factor to his carpal tunnel syndrome. In response to a hypothetical question involving a specific accident on April 12th when petitioner was lifting a heavy form Dr. Maender testified that a single incident was not enough to cause carpal tunnel syndrome. Dr. Maender testified that it was likely more a symptom of his carpal tunnel syndrome than a causative factor in it. Dr. Maender testified that the only records that he reviewed in addition to his own was Dr. Trudeau's nerve conduction study. Dr. Maender was not aware of when petitioner was first diagnosed with carpal tunnel syndrome. Dr. Maender was not aware of when petitioner started working for the respondent. Dr. Maender agreed that there are certain stages of symptoms which indicate carpal tunnel syndrome is advanced. Dr. Maender agreed that an end stage complaint of carpal tunnel syndrome is loss of grip strength. (PX4). **Dr. Maender did not address the causal connection issue of what effect petitioner's employment with the respondent had on his pre-existing carpal tunnel syndrome.**

At the request of the respondent Dr. Michael Cohen performed a record review on 7/5/2012. As part of his review Dr. Cohen reviewed petitioner's complete medical records and was aware of when petitioner' employment started with the respondent. Dr. Cohen's evidence deposition proceeded on 10/17/2012. Dr. Cohen is a board certified orthopedic surgeon whose practice is limited to the upper extremity including the hand, wrist, elbow, and shoulder. Dr. Cohen testified that he has performed more than 1,000 carpal tunnel releases. Based on his review of the complete medical records Dr. Cohen testified that petitioner was diagnosed with

carpal tunnel syndrome 4 months before his employment started with the respondent. Regarding the issue of causal connection Dr. Cohen testified that even if you assume that petitioner's work for the respondent would be considered high risk for carpal tunnel syndrome petitioner's work for the respondent was not a causative factor in his carpal tunnel syndrome and need for surgery. Dr. Cohen further testified that "Therefore, my conclusion is that the – whatever job he was doing at Perry, did not alter the natural history of what I would have expected with a 26 year old gentlemen who smoked with bilateral carpal tunnel syndrome, what would have happened to him over the natural history. He followed it perfectly." Dr. Cohen testified that this was based on the fact that petitioner was diagnosed with carpal tunnel syndrome prior to his employment with the respondent and had symptoms for 10 plus months before he worked for the respondent. Dr. Cohen testified that even if the petitioner did not work for the respondent he would have ended up in the exact same place. Lastly Dr. Cohen testified that if petitioner sustained a specific accident on 4/12/2012 it would not be a causative factor in his carpal tunnel syndrome. (RX3).

Therefore the Arbitrator concludes:

First of all, the Petitioner has failed to prove a causal relationship between his specific accident of April 12, 2012 and his bilateral carpal tunnel syndromes. Dr. Maender testified that the event was not a causative factor in the condition, but produced symptoms of the condition already diagnosed. (PX 4 at 13)

A more difficult question is whether the Petitioner's work for the Respondent either caused or aggravated the condition. We know from the evidence that the work the Petitioner performed as a concrete finisher for the Respondent was strenuous and repetitive, and could, by all accounts aggravate a carpal tunnel. Dr. Maender testified that swinging the sledge hammer and picks required forceful gripping and produced impact on the hands which could be contributing factors.

The Petitioner must prove, by a preponderance of the evidence, that the work was in fact a causative factor. For the reasons stated below, the Arbitrator finds that the burden of proof was not met, and the claim is denied.

The Petitioner had a diagnosed symptomatic carpal tunnel syndrome on March 7, 2011, just over four months prior to when he began working for the Respondent. At the time, he complained to his doctor about throbbing pain, difficulty gripping at work and numbness and tingling. The examination showed positive Phalen's and Tinel's tests. The doctor diagnosed carpal tunnel syndrome and prescribed injections and splints.

While the Petitioner testified that the conservative treatment provided complete relief of his symptoms, his histories to his physicians who he saw a year later told a different story. He reported to his doctor at the HSHS Medical Group on April 12, 2012 that his symptoms had been present for the past year, and that the splints

provided to him earlier were not helping. He also told Dr. Trudeau about a week later that his symptoms had been present a year. Nowhere is there is history that he used the splints, got better, and got worse after working for the Respondent.

In addition, his work foreman, who admittedly could be biased, testified that the Petitioner complained of hand pain within two weeks from when his job began.

Also, while Dr. Maender testified that his work as a concrete finisher could have aggravated the condition, he was unaware that the condition had been diagnosed prior to the start of Petitioner's work for the Respondent.

Finally, when you compare the Petitioner's complaints, exam findings and diagnosis before and after he began working for the Respondent, you will see they a virtually the same. On April 12, 2012, as in March 2011, he had pain, numbness, tingling and weakness of grip. His exams showed positive Phalen's. The only differences were the positive electrical studies in 2012, as none were taken a year earlier. Given the above evidence, the Arbitrator simply cannot assume that if earlier tests were done, they would show anything less than what was seen on the actual tests.

This case is different than the numerous commission cases where there was pfoof of either improvement or worsening of the condition after work for a Respondent. It is different than the Oscar Meyer case, where subsequent electrical studies confirmed a worsening of the condition while a Petitioner continued working after the initial diagnosis. Oscar Meyer Company v. The Industrial Commission, 176 Ill. App. 3d (1988). It is also distinguishable from the Durand case, where a worker had symptoms but no treatment or diagnosis, kept working, and three years later began treatment. Durand v. The Industrial Commission, 224 Ill. 2d 53 (2006).

Under the facts of this case, the Arbitrator adopts the reasoning of Dr. Cohen. The Petitioner had carpal tunnel in March 2011, and it was the same carpal tunnel which was treated one year later. The Arbitrator cannot assume the Respondent's work aggravated the condition.
Petitioner's claim for compensation is denied. Determination of other disputed issues is moot.

The Arbitrator admits into evidence Respondent's Exhibit 5, pursuant to Rule 609 of the Illinois Rules of Evidence.

STATE OF ILLINOIS	)	☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF LAKE	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Silvia Pagaza,
Petitioner,
vs.

NO: 06WC 45434

14IWCC0140

Affinia Group,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 25, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $7,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 27 2014
o022014
CJD/jrc
049

Charles J. DeVriendt

Stephen Mathis

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PAGAZA, SILVIA
Employee/Petitioner

Case# **06WC045434**

AFFINIA GROUP
Employer/Respondent

14IWCC0140

On 2/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2573 MARTAY LAW OFFICE
DAVID MARTAY
134 N LASALLE ST 9TH FL
CHICAGO, IL 60602

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERTE MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

14IWCC0140

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Sylvia Pagaza
Employee/Petitioner

v.

Affinia Group
Employer/Respondent

Case # 06 WC 45434

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Granada**, Arbitrator of the Commission, in the city of **Waukegan**, on **December 28, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

On **August 7, 2006**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident as to the right leg, not the back.

In the year preceding the injury, Petitioner earned **$28,860.00**; the average weekly wage was **$555.00**.

On the date of accident, Petitioner was **47** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services based on stipulation .

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services based on stipulation of respondent that they will pay the outstanding medical of $194.00.

Respondent shall be given a credit of **$21,352.78** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$21,352.78**.

Respondent is entitled to a credit of **$-0-** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $333.00/week for 86 weeks, because the injuries sustained caused the 40% loss of the right leg, as provided in Section 8(e) of the Act.

Petitioner failed to prove that she is entitled to any additional temporary total disability benefits beyond that paid by the Respondent.

The petitioner failed to prove causal connection between current complaints of back pain and injury.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

2/22/13
Date

FEB 25 2013

Findings of Fact

The petitioner began working for the Respondent as a UPS Order Picker in 2005. On August 7, 2006, she was working in that capacity on a Prime Mover when her right leg became pinned between a steel rod and the Prime Mover. There is no dispute that the Petitioner sustained an accident on that day and that her injuries to her right leg are causally connected to the accident.

She was initially seen at the emergency room of Centegra Health System on the date of injury, with a history of her leg being pinned between a forklift and wall. The pain drawing showed that she was complaining of pain in the right thigh area. X-rays were taken of her right femur and pelvis. She was diagnosed with a right femur fracture and she came under the care of Dr. Timothy Havenhill. There is no mention of Petitioner having complaints of pain to her back. Dr. Havenhill on August 8, 2006 performed a right femoral intramedullary nailing for a preoperative and postoperative diagnosis of right femoral shaft fracture. The petitioner postoperatively developed problems, including postop anemia, intractable pain and significant soft tissue swelling around the fracture site. Doppler studies were performed, and they were normal, with no evidence of obvious deep vein thrombosis. The petitioner was discharged from the Hospital on August 19, 2006 with diagnosis of: mobility dysfunction, impaired activities of daily living and self-care activities; fracture of the right femur, status post intramedullary rodding, post-operative anemia, intraction pain and gastroesophageal reflex disease. There was no mention during the hospitalization of any injury to her back.

The petitioner thereafter followed with Dr. Havenhill August 23, 2006, September 22, 2006, September 28, 2006, October 27, 2006, November 27, 2006 and December 6, 2006. The petitioner during her visit on September 22, 2006, complained of tenderness in her right lower mid-lumbar region, with a negative straight leg raising. There was no mention of any back pain during the subsequent visits on September 28, 2006, October 27, 2006 and November 27, 2006.

During the petitioner's visit to Dr. Havenhill on December 6, 2006, she complained of doing a sitting job and having back pain. Dr. Havenhill, in his note of December 6, 2006, indicated that it was unclear exactly why sitting caused her back pain given that it was a sedentary job. He recommended some back stretching. The petitioner testified that she returned to work in December 2006 to a sitting job for one day.

The petitioner returned to Dr. Havenhill on January 8, 2007 and February 12, 2007, with the doctor feeling her back pain was secondary to altered gait. The doctor released her to light duty work. The attendance records offered into evidence showed that she did return to work on February 14, 2007. The petitioner testified that they returned her to work in the Receiving Department, putting labels on rotors (Tr. p. 30).

Ms. Effie Hoppe on behalf of the Respondent. Ms. Hoppe is an office manager, whose duties include human resource issues and overseeing workers compensation claims. She testified that the Respondent had a policy of returning employees who sustained work related accidents, to light duty pursuant to the treating doctor's restrictions. She testified that from February 14, 2007 through June 20, 2007, the petitioner was placed in Receiving, placing labels on the rotors or working in the rebox area, which she believed fell within the doctor's restrictions and was a regular job that people performed on a daily basis (Tr. pp. 54-58).

The petitioner returned to Dr. Havenhill on March 15, 2007 for diagnosis of right femur IM nailing and right medial knee pain. He indicated that as to her back complaints, that was coming from the gluteus muscle that is common with IM nailing surgery. In reviewing the doctor's handwritten notes, there was no mention of any

specific back pain. Dr. Havenhill on this date referred her to Dr. Nixon for evaluation of her right medial knee pain.

The petitioner was seen by Dr. Nixon on March 21, 2007. His diagnosis was right femur fracture and right medial knee pain. He had an MRI of the knee done that did not demonstrate clear evidence of any meniscal abnormality, although there was slight increase in fluid content.

The petitioner returned to Dr. Nixon on April 4, 2007, and he gave her a trial of intra-articular cortisone injection to the knee. He felt that she could continue with restricted duty. The petitioner returned on April 16, 2007, indicating that she noted some improvement with the injection, not quite 50%, with the plan to continue with the medication and for her to continue with light duty activities. The diagnosis was right medial knee pain, right knee neuritis. The petitioner returned to Dr. Nixon on May 14, 2007, and he suggested an MRI scan to see if there was a meniscal tear present and if so, arthroscopic surgery. The petitioner returned on May 21, 2007, and the MRI demonstrated a meniscal tear. Based upon her complaints, he had an MRI of the back done, which failed to reveal any evidence of herniation, nerve compression or mechanical pathology. The plan was to proceed with meniscal surgery to the right knee.

Dr. Nixon on June 21, 2007, performed an arthroscopy of the right knee with partial medial meniscectomy. The operative report indicates that the knee was normal except for a small marginal area split along the posterior medial corner, which was debrided. The petitioner, during this period of time, was kept off from work by Dr. Nixon until July 30, 2007, when he released her to sedentary work. Effie Hoppe testified that the petitioner was allowed to return to work within Dr. Nixon's restrictions (Tr. p. 58). The petitioner returned to Dr. Nixon on August 20, 2007, and he put a restriction on her to work 4-hour shifts for two weeks, and then 6-hour shifts for two weeks, then regular duty thereafter. Effie Hoppe testified that they followed those restrictions. Effie Hoppe testified that the petitioner was working in the office, Data Entry, working on Excel spreadsheets. Effie Hoppe testified that this was a regular routine job.

The petitioner then worked at Affinia 8 hours a day from September 15, 2007 through April 2, 2009. The petitioner asked to be removed from the office, and she was placed out on the packing line, working with small parcels. She worked either auditing orders where she would have to cut open the box and double check what was on the order with what was in the box, making sure it was accurate. Effie Hoppe testified that this was a routine normal job performed at Affinia, and that she worked with eight people on the line, with Sylvia being provided a stool. She testified that petitioner could sit or stand as needed. She testified that there was really no lifting involved as the boxes came down a conveyor that she would have to cut open, making sure that the parts were in the right box and that she was working with the 10-pound restriction (Tr. pp. 59-62).

During the period of time the petitioner was working, she was seen by Dr. Nixon on September 17, 2007 and October 22, 2007. There was a discussion on September 17, 2007 of whether the residual hardware implant could be the reason for her symptoms, with the doctor indicating it was unreasonable for her to pursue hardware removal. On October 22, 2007, Dr. Nixon indicated he did not see the pattern of her knee pain matching any irritation from the hardware. He recommended against removal of the hardware. He released her at maximum medical improvement.

On August 8, 2008, the petitioner sought a second opinion with Dr. Arif Ali. The petitioner at this time was complaining of thigh and upper leg pain. The impression was status post ORIF right femur fracture with retained hardware. He recommended that she consider having the hardware removed. In his report, he

indicated he could not give any assurances or guarantees that the procedure would give her full relief of her symptoms. There were no back complaints at this time.

The petitioner, as to the issue of hardware removal, was seen on September 2, 2008 for an independent medical evaluation with Dr. James Cohen. Dr. Cohen felt that the IM rod was in excellent position. He indicated there was no evidence of any stress reaction of the fracture; it completely healed in anatomical position. He indicated it was difficult to account for her pain, which appeared to be out of proportion to objective findings. He saw no reason to remove her hardware, nor recommend any additional care. He felt that she was at maximum medical improvement, and that she should continue to do her sedentary-type duties.

The petitioner continued to follow up with Dr. Ali, who continued to believe that her leg pain was due to the interlocking screws, but he could make no guarantees that she would get pain relief from removal of the screws and the IM hardware. The petitioner followed up with Dr. Ali on November 25, 2008, February 10, 2009, April 2, 2009. Again, the petitioner was insisting on the hardware removal, and the doctor wanted to perform same. There was no mention of any back pain. The petitioner took off from work, unexplained, on April 3, 2009 through April 30, 2009. She came back to work May 1, 2009. There was no off-work slip to support her being off work.

On May 8, 2009, the Company received a note from the physical therapist, asking that the petitioner be allowed to stand up and walk every two hours, as part of her physical therapy. Effie Hoppe testified that Affinia honored that restriction.

The petitioner worked until her hardware removal on July 29, 2009. The petitioner then was released by Dr. Ali on December 17, 2009, with a 10-pound restriction. Effie Hoppe testified that she honored those restrictions, and the petitioner worked on the packing line, again auditing and placing the packing list. Effie Hoppe testified that she stopped working March 2, 2010. She testified that the petitioner never complained to her of any problems with her job or working outside of her restrictions between December 18, 2009 and March 2, 2010 (Tr. p. 64).

The petitioner on February 5, 2010 submitted to a second IME evaluation with Dr. James Cohen. He indicated that he felt, as previously, that she had reached maximum medical improvement. He found it difficult to find a specific entity to account for her diffuse symptoms. He indicated that she had ill-defined pain and that a pain specialist would not be helpful for her condition. He indicated that his restriction regarding being able to sit approximately 15 minutes every 2 hours was based upon her complaints of pain. He felt that she was at maximum medical improvement, and that a lifting restriction of 15 pounds would be appropriate.

The petitioner did return to Dr. Ali on March 2, 2010. Dr. Ali's note shows "she presented to my office for a request to have an off-work slip." The Arbitrator would not that the petitioner requested the note and not necessarily that the doctor recommended same.

The petitioner testified that she never returned to work for Affinia after March 2, 2010, nor to any employment. Dr. Ali on April 13, 2010 recommended a functional capacity evaluation.

A functional capacity evaluation was done on July 30, 2010. The functional capacity evaluation revealed that the overall results of the evaluation represent a questionable and unreliable performance secondary to the submaximal performance demonstrated by Ms. Pagaza during her performance of a variety of functional tasks. It indicated she demonstrated inconsistent reliability, with the overall results not representing a true and

accurate representation of her overall physical capacities and tolerances. The indication was she failed 15 out of 29 objective validity criteria and demonstrated inconsistent reliability, with a physical demand level being unable to be determined based upon submaximal effort. It did reveal the ability to lift/carry 10 pounds floor to waist level representing the minimal amount she could perform.

The petitioner returned to Dr. Ali on August 24, 2010, with the doctor noting a full range of motion of the knee. He felt that she should not lift more than 10 pounds.

Effie Hoppe testified that the petitioner never brought in Dr. Ali's note of August 24, 2010, which gave her the same restrictions on August 24, 2010 that he gave her on December 17, 2009.

Effie Hoppe testified that they would be able to accommodate the petitioner's restrictions, and that if she wanted a job, they would be able to place her on the small parcel pack line, which she previously did, which fell within the doctor's restrictions (Tr. p. 72).

The petitioner was last seen by Dr. Ali on September 29, 2011. She was complaining of her right hip and femur pain. Dr. Ali indicated that she was at maximum medical improvement and no further intervention was needed as to her right hip and femur. As to the back, he noted that the MRI in 2006 was essentially negative, and he did not believe any new MRI would be covered by her workers' compensation claim.

The petitioner at the request of respondent was evaluated by Dr. Troy Karlsson on July 3, 2012 for purpose of the right leg (See RX 5) Dr. Karlsson performed a detailed evaluation to include review of records. He indicated she had a mid-shaft femur fracture, which is fully healed, and had a possible small medial mensical tear, which was treated with trimming out arthroscopically. He indicated that both of these are conditions that people uniformly recover well from and have no residual functioning deficits. There were no physical exam or test findings to correlate her subjective complaints. He found her at maximum medical improvement. He felt that she needed no work restrictions whatsoever regarding the right leg.

The respondent had the petitioner evaluated by Dr. David Fletcher regarding her back condition on September 19, 2002. He took a detailed history from the petitioner, reviewed the medical records and found that there was symptom magnification present and documented on functional testing. He agreed with Dr. Karlsson that there were no physical exam or test findings to correlate with her subjective complaints. He found her at maximum medical improvement and put no restrictions on her right lower extremity. He felt that she had a normal neurological examination and was not in need of any additional care or treatment for the back or any restrictions to the back. His diagnosis was ORIF right femur fracture with hardware removal and right knee arthroscopy. He disputed the work relatedness of the back condition.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. The Arbitrator finds that the petitioner did sustain accidental injuries to her right leg, resulting in the right femur surgery and the right knee surgery. However, the Arbitrator finds that the Petitioner did not meet her burden of proof regarding whether the Petitioner sustained a work-related injury to her back. This is based upon the lack of any initial complaints to the back, the negative MRI of 2006, the lack of consistent complaints in the treating records, the comment by Dr. Ali in his last evaluation of September 21, 2011, and the exam findings and opinion of Dr. David Fletcher that the petitioner sustained no accidental injuries to her back. The Arbitrator notes the questions raised by the various treating physicians of having no explanation for her pain.

2. As a result of the injury to her right leg, Petitioner sustained 40% loss of use of her right leg. Accordingly, Respondent shall pay Petitioner $333.00 per week for 86 weeks pursuant to Section 8(e) of the Act.

3. Petitioner's claim for TTD benefits are denied. The Arbitrator notes that the respondent, on each and every occasion where the petitioner was given restrictions, found work for the petitioner within those restrictions. As to the first period of temporary total disability benefits claimed, April 3, 2009 through April 30, 2009, there is no off-work slip or opinion by any of the treating physicians that she needed to be off from work during this period of time. The petitioner was being provided work within the restrictions of her treating doctor. As to the period of temporary total disability benefits after March 3, 2010, the Arbitrator notes that the petitioner was working within the 10-pound restriction given to her by Dr. Ali on December 17, 2009, with those work restriction being confirmed by Dr. Cohen's second IME evaluation on February 5, 2010. The petitioner on March 2, 2010 went to Dr. Ali asking for an off-work slip, with Dr. Ali taking the petitioner off from work, despite having an inconsistent functional capacity evaluation done on July 30, 2010, showing the petitioner's minimal ability to work at 10 pounds. Dr. Ali released the petitioner on August 10, 2010 to the same restrictions which he gave on December 17, 2009 and which the Respondent was honoring. The Arbitrator notes that there were regular and usual jobs available to the petitioner within that 10-pound restriction, which they would have provided to the petitioner to perform and would, to this date, provide the petitioner to perform. The petitioner apparently did not want to return to work for the respondent after March 2, 2010, nor has she looked for work elsewhere.

4. As to the issue of unpaid medical, there were only two unpaid medical bills. One from Dr. Ali in the amount of $100.00 and one from McHenry Ortho in the amount of $94.00. Pursuant to the stipulation between the parties, the respondent shall pay these medical expenses subject to the Fee Schedule and in accordance with Sections 8(a) and 8.2 of the Act.